

GOVDOC

BRA

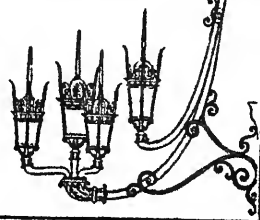
3106

BOSTON PUBLIC LIBRARY



3 9999 06583 300 4

BOSTON  
PUBLIC  
LIBRARY



**1**

**2**

**3**

**4**

**5**

**6**

**7**



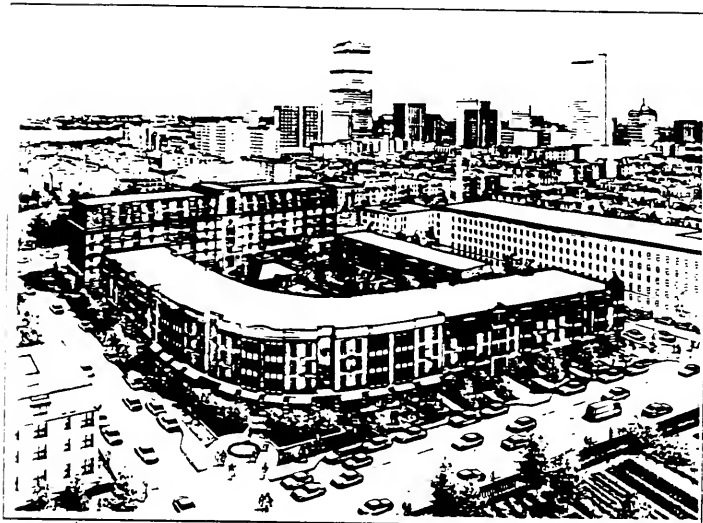
GOVDOC

BRA

3106

# HOUSING PROPOSAL

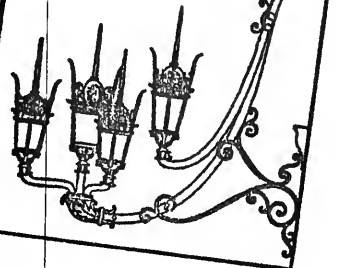
DOUGLAS PLAZA  
ROXBURY



Douglas Plaza Housing Company

Boston Redevelopment Authority  
Boston, MA

BOSTON  
PUBLIC  
LIBRARY



COUNCILOR BRIAN McLAUGHLIN  
BOSTON CITY COUNCIL  
BOSTON CITY HALL  
ONE CITY HALL PLAZA  
COUNCIL CHAMBERS, 5th FLOOR  
BOSTON, MA 02201

BOSTON  
REDEVELOPMENT  
AUTHORITY

One City Hall Square  
Boston, MA 02201  
(617) 722-4300

MEMORANDUM

TO: NEIGHBORHOOD HOUSING TRUST

FROM: THOMAS O'MALLEY

DATE: JANUARY 16, 1991

SUBJECT: DOUGLASS PARK PROJECT

Enclosed, please find the completed application for the Douglass Park Project.

Last night the Tenants Development Corporation Board of Directors voted to approve the terms and conditions surrounding the submission of the Neighborhood Housing Trust Application. We expect a final document to be hand delivered to you early afternoon today.

Thank you.

Enclosure

Digitized by the Internet Archive  
in 2010 with funding from  
Boston Public Library

<http://www.archive.org/details/housingproposald00doug>



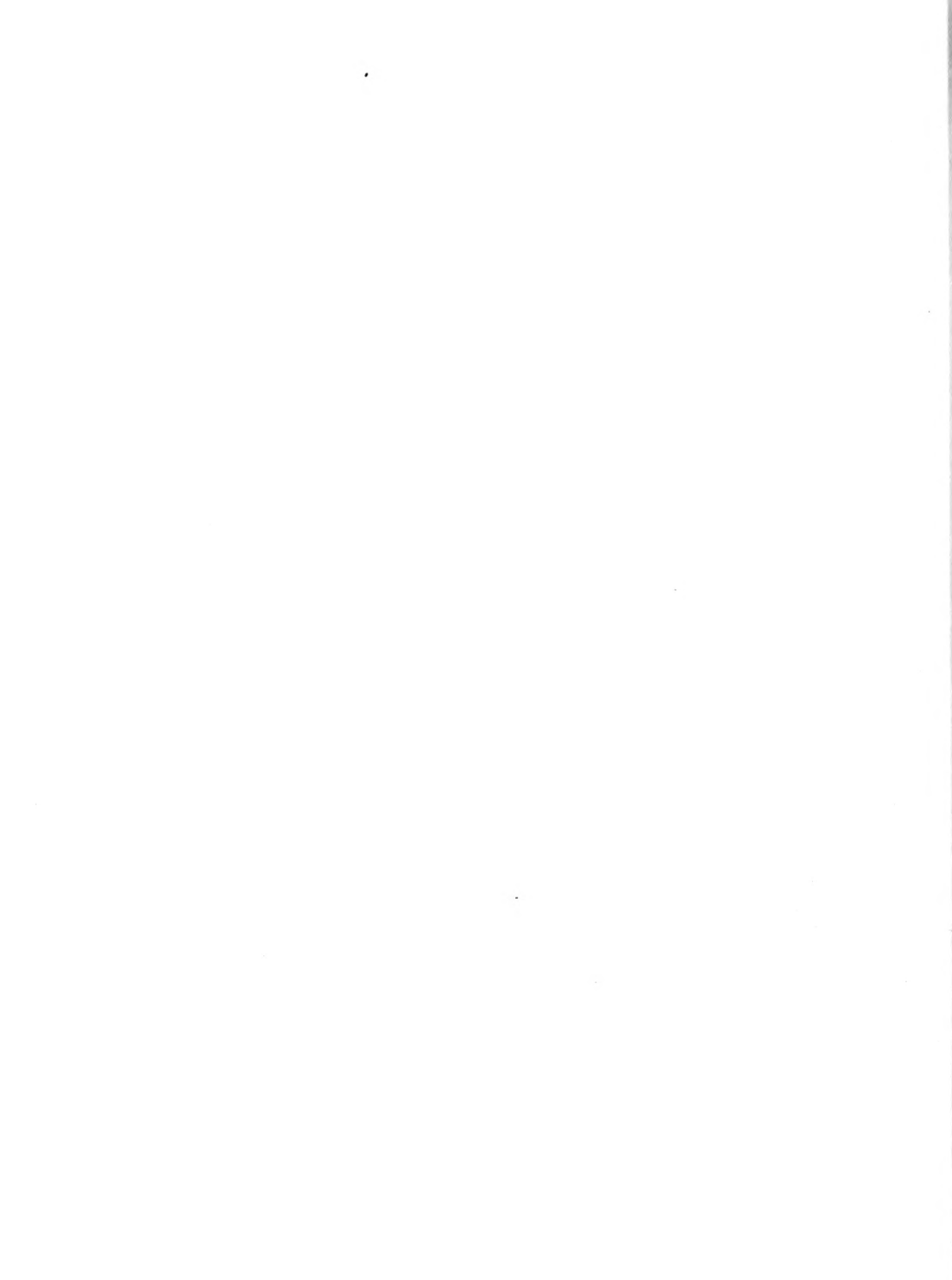
## TABLE OF CONTENTS

### DOUGLAS PARK

1. Letter of request - Douglass Plaza Housing Associates  
Phase I L.P.  
Letter of Support - Stephen Coyle, BRA
2. Site Map & Rendering
3. Neighborhood Housing Trust Application
4. Certificate and Agreement of Limited Partnership
5. Resume - Boston Land Company
6. Affirmative Marketing Plan
7. Cost Certification, approved by MHFA







January 14, 1991

Board of Trustees  
City of Boston Neighborhood Housing Trust  
One City Hall Square  
Boston, Massachusetts 02201

Re: Request for Reimbursement for Hazardous Waste Clean Up  
Douglass Park Apartments and Condominiums  
Lower Roxbury, Boston, Massachusetts

Gentlemen:

Attached hereto please find an application for funding from the Neighborhood Housing Trust to reimburse the developer of Douglass Park Apartments and Condominiums for the costs it incurred in connection with the removal of contaminated soils discovered on the project site, formerly BRA Urban Renewal Parcel 16. The total amount of the request is \$106,000. This reimbursement reflects a negotiated settlement of the matter between the developer and the BRA, and is intended to preclude costly legal action between the parties.

In addition, this settlement is in recognition of the very significant cash equity contributed by the developer in order to both complete construction of the development and maintain its debt service obligations. In total, the developer's equity contributed to date is approximately \$5 million, which is by far the largest single private equity investment in Lower Roxbury in decades. Additional equity investment by the developer in order to cover operating shortfalls is anticipated for the foreseeable future.

We thank you for consideration of this request.

Sincerely,

Douglass Plaza Housing Company I Limited Partnership

By its General Partner,  
Douglass Plaza Associates Phase One Limited Partnership

*Arthur D. Ullian, Attorney in Fact*  
*Arthur D. Ullian*  
Arthur D. Ullian, Managing General Partner



BOSTON  
REDEVELOPMENT  
AUTHORITY

Raymond L. Flynn  
Mayor

Stephen Coyle  
Director

One City Hall Square  
Boston, MA 02201  
(617) 722-4300

January 10, 1991

Mr. Lawrence Dwyer, Chairman  
Neighborhood Housing Trust  
One City Hall Square  
Boston, MA 02201

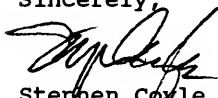
Dear Mr. Dwyer,

The Boston Redevelopment Authority supports the application for funding for the Douglass Park Project. This 155 unit project which is located at the intersections of Tremont and Camden Streets, Columbus Avenue and a new street, known as Douglass Park. The project was completed in October 1989 and 33 of the units are currently occupied by low income households. The project has been an important addition to the Lower Roxbury community and will pave the way for development along the Southwest Corridor.

The developers of Douglass Park, The Boston Land Company, The Concord Baptist Church, Lawrence Smith, and Richard Taylor, have committed tremendous resources to this affordable housing project. The project experienced cost overruns during construction as well operations when rents were reduced and the developers introduced security in order to ensure 100% occupancy. Douglass Park has attracted many residents through an extensive security force which is on site 24 hours a day. High operating costs have forced the developers to request additional SHARP funds from the State.

A portion of the construction overruns resulted from hazardous soils found on the site. The developers incurred costs in the amount of \$106,000 as a result of this hazardous waste. The Boston Redevelopment Authority supports the application for \$106,000. Douglass Park has committed equity towards the operations of this project which will provide quality affordable housing for many years to come.

Sincerely,



Stephen Coyle,  
Director

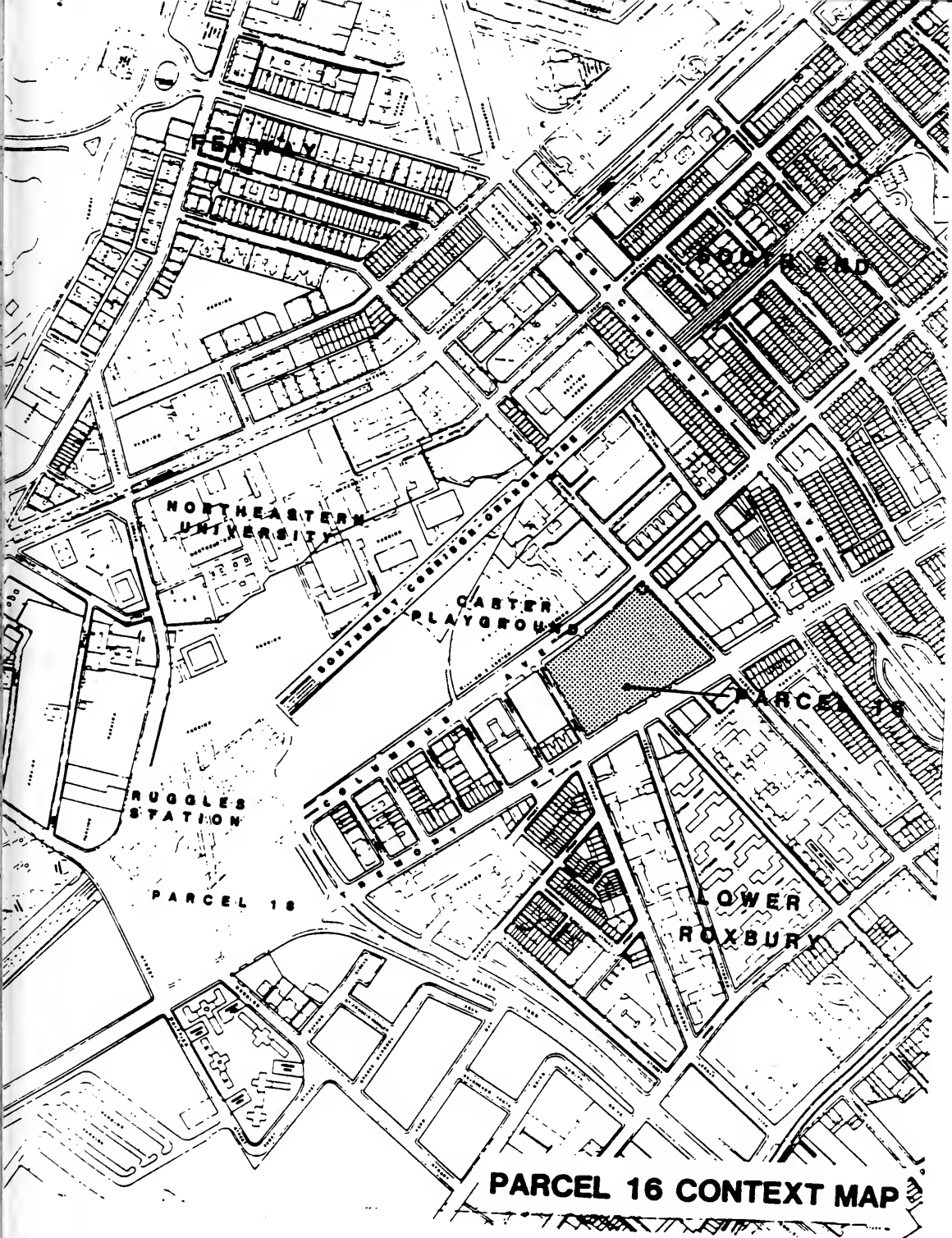






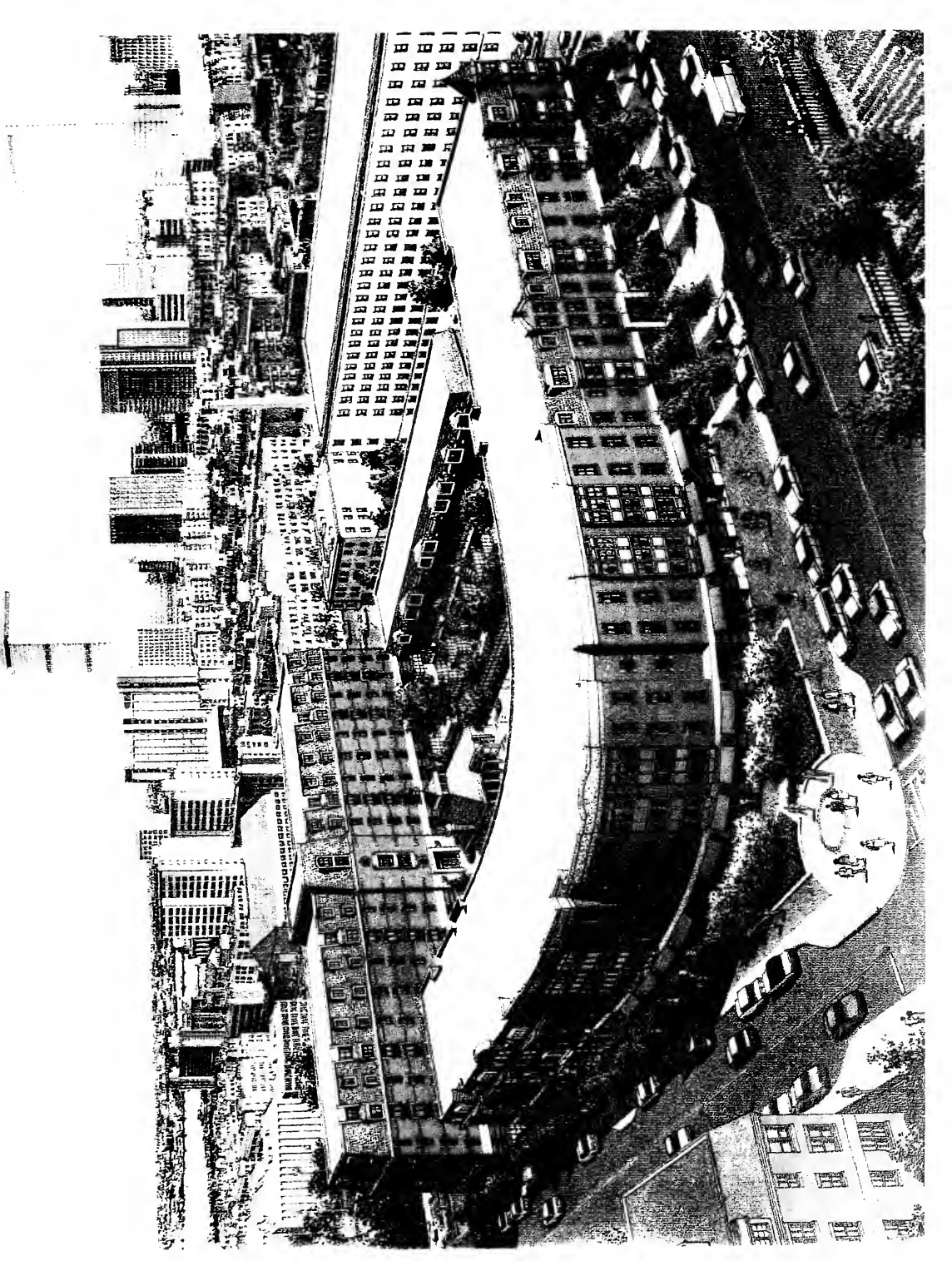






**PARCEL 16 CONTEXT MAP**













Form 1: PROJECT SUMMARY

1. APPLICANT: Douglass Plaza Housing Company I Limited  
Partnership  
c/o The Boston Land Company  
151 Tremont Street  
Boston, Massachusetts 02111  
(617) 451-5757  
Contact: Jeff Goodman
2. PROJECT ADDRESS: 650 Columbus Avenue  
801 Tremont Street  
3 Douglass Park  
Roxbury, Massachusetts 02118
3. PROJECT NAME: Douglass Park Apartments and Condominiums
4. PROJECT TYPE: New Construction  
Mixed-Use Rental/Condominium/Retail
5. PROJECT DESCRIPTION:

Douglass Park is the first large scale private development in Lower Roxbury created as a direct result of the MBTA Southwest Corridor project. Serving as the gateway to Parcel 18, Douglass Park contains 122 mixed income rental apartments, 33 condominiums, a 146-car underground parking garage, and approximately 6,500 net square feet of retail space in three buildings designed to complement the Victorian-era architectural detailing of the adjacent South End neighborhood. It was developed by Douglass Plaza Housing Company I Limited Partnership, a joint venture of non-profit, for-profit and minority-sponsored entities, including: the Concord Baptist Church, The Concord Baptist Church Housing and Economic Development Corporation, Taylor Properties, Property Development Services, and The Boston Land Company.

Construction, mini-perm. construction financing and permanent financing for the project was provided by the Massachusetts Housing Finance Agency using a combination of tax-exempt bonds and short term taxable bond anticipation notes. Completion was achieved in January, 1990, approximately six months behind schedule. Total cost overruns during the development process, including construction change orders and additional interest charges, were \$4,045,261 which were covered by a cash infusion from the Owner.

While some of the overruns were initiated by the Owner to enhance the marketability of the development, the major percentage of the overruns were caused by events beyond the Owner's control, and include: extra foundation costs incurred as a result of subsurface obstructions, additional fire protection requirements imposed by the City of Boston Fire Department, the reconfiguration of the electrical distribution system for the



project and addition of an underground transformer vault due to Boston Edison's change in plans for upgrading the network system in the area to accommodate future developments planned for the neighborhood.

In addition to the above-mentioned cost overruns, the Owner incurred approximately \$106,000 in unanticipated engineering, testing, hazardous soils removal, and new soils importation expenses as a consequence of a determination by the Department of Environmental Protection that the site had been the location of a prior discharge of hazardous materials, principally kerosene, into the ground. This site had been taken by eminent domain and cleared by the Boston Redevelopment Authority in the early 1960's for urban renewal, and was sold by the Authority for a cash price of \$70,200 to the present Owner in 1987 for development of Douglass Park. No notice was provided to the Owner prior to purchase of the site that such discharge had occurred or that the site had previously been listed by the DEP (formerly DEQE) as a possible contaminated location.

Rather than seeking redress through formal means, the Owner and the Authority have agreed that settlement of the claim for damages can be achieved through a reimbursement of the expenses incurred and prepaid by the Owner for the environmental clean-up.

The Owners and the Authority hereby formally request from the Neighborhood Housing Trust a grant of \$106,000 to be used to reimburse Douglass Plaza Housing Company I Limited Partnership for the expenses it incurred in connection with the environmental clean up of the site of Douglass Park Apartments and Condominiums, formerly Urban Renewal Parcel 16.

This request is also made in recognition of the significant cash equity commitment of the Owner to the development. As stated above, the Owner infused approximately \$4.045 million cash equity to complete the development of the project. Since completion, an additional \$928,130 has been contributed by the Owner to cover operating losses experienced at the project, putting the project into a difficult financial condition. Two primary factors account for these operating losses: (1) the creation of a round-the-clock private police force at significant expense to the Owner in response to the explosion of gang and drug-related violence in the immediate neighborhood surrounding the project. One notable case was the stabbing death of Mark Belmore, a Northeastern University undergraduate student, one block from Douglass Park; and (2) the severe drop in sales activity in the condominium market resulting from the neighborhood violence and the unexpected economic downturn, leaving 30 of the 33 condominium units unsold after one full year. These units remain unsold despite 25%-30% reductions in the sales prices of the units and other significant incentives offered to potential buyers. It is likely that the Owner will continue to experience operating losses for the foreseeable future, and has applied to MHFA for SHARP Level 2 additional subsidies to help mitigate the



impact of running continued deficits.

UNITS BY TYPE AND INCOME

	Total	New
Rental	122	122
Ownersh'p	33	33
Low Inc.	33	33
Mod Inc.	0	0
Other	122	122

HOUSING UNIT SIZE AND PRICE BREAKDOWN

	# OF UNITS	S.F./UNIT	MARKET RATE UNITS SALE PRICE/RENT	TOTAL DEV COST/SF
Studio	0	0	0	0
1 BR	49	700 - 830	\$795 - \$830/MO RENT \$105 - \$120,000 SALES	\$89.22
2 BR	92	980- 1325	\$1040 - \$1275/MO RENT \$125 - \$140,000 SALES	\$89.22
3BR	14	1520 - 1550	\$1295 - \$1375/MO RENT \$150 - \$170,000 SALES	\$89.22
4BR	0	0	0	0

6. TOTAL DEVELOPMENT COST: \$26,717,310

7. DEVELOPMENT COST PER SQ. FT (NEW CONSTRUCTION): \$89.22

8. PROPERTY PURCHASE PRICE: \$70,200 (CASH PRICE PAID)

Note that, in addition to the cash price paid, additional moneys are due the BRA in the event that there is a profit on the sale of the condominiums, in the event that the Owner constructs a second phase of the project, and from the residual value of the project in Year 20.

9. NUMBER OF PARKING SPACES: 146 (underground garage)

10. % OF OPEN SPACE: 61.07%



11. FLOOR TO AREA RATIO: 2.22

12. UNIQUE PROJECT FEATURES:

The architectural features of Douglass Park reflect many of the Victorian-era details of the South End neighborhood, including: bay windows, mansard roofs with dormer windows, fenced street level gardens, brick cornices, and individual unit entryways along the streetscape. The center of the site is highlighted by a landscaped courtyard, and all parking spaces are beneath ground level in a 146-car garage. At the Southeast corner of the block, a curved street level retail corner has been established fronted by a granite and brick plaza dedicated in honor of Frederick Douglass, a noted abolitionist and writer/philosopher of the mid-19th Century.

Apart from the physical aspect, Douglass Park represents a unique mix of uses and a wide diversity of socio-economic backgrounds amongst the residents. From middle income attorneys and college professors to moderate income bus drivers and economically disadvantaged single mothers and children, Douglass Park has become a model of 21st Century Boston as a welcome home for a broad range of people and cultures.

13. COMMERCIAL USES:

A retail corner containing 6550 net square feet of commercial space has been constructed as part of the project. The first and only tenant is the Haymarket Affordable Housing Corporation, an affiliate of Haymarket Cooperative Bank, which took 1700 square feet and specializes in providing first time moderate income homebuyers with mortgage financing. It is hoped that leases can be signed for the vacant space by mid-Spring, although leasing activity has been hampered by the economic slowdown in the region, the scarcity of credit for start-up businesses, and the lack of off-street parking for retail customers.

14. # OF COMMERCIAL UNITS: 3 OR 4 (depending upon the layouts of the tenants).

15. COMMERCIAL SQUARE FOOTAGE: 6500 NET RENTABLE S.F.

16. COMMERCIAL RENTS: \$15/FOOT (exclusive of electricity)

17. PROJECT FINANCING:

RENTAL COMPONENT:	MHFA 1st Mortgage Loan	14,147,680
	HoDAG Loan	3,430,750
	Cash Equity	3,282,146

CONDOMINIUMS:	MHFA Mortgage Loan	5,093,619
	Cash Equity	763,115





18. FINANCING GAP: \$4,045,261. Housing Trust Repayment Request is for \$106,000, or 2.6% of the gap.

19. PUBLIC ASSISTANCE SOURCES:

(A) HoDAG LOAN \$3,430,750

(B) CDAG GRANT \$966,700 (Off site public improvements)

In addition, the project receives public rent subsidy funding for the low income units from the SHARP and RDAL Programs. Certain low income tenants are directly subsidized through a federal Section 8 or a State Chapter 707 Certificate.

20. TOTAL LINKAGE REQUEST: \$106,000

21. LINKAGE PER LOW/MOD UNIT: \$3,212

22. TYPE OF LINKAGE REQUEST: REIMBURSEMENT (GRANT)



FORM 2

1. DEVELOPMENT TEAM INFORMATION

-----

DEVELOPER: Douglass Plaza Housing Company I Limited Partnership  
c/o The Boston Land Company  
151 Tremont Street  
Boston, Massachusetts 02111  
(617) 451 - 5757  
Contact: Jeff Goodman

The General Partner of DPHCILP is Douglass Plaza Associates Phase One Limited Partnership. The General Partners of DPAssociates are:

Lawrence Smith, President, Property Devel. Services  
Richard Taylor, President, Taylor Properties  
Arthur Ullian, Partner, The Boston Land Co  
Robert Kargman, Partner, The Boston Land Co

The Special Limited Partners are:  
The Concord Baptist Church  
CBC Housing and Economic Development Corp.

ARCHITECT: ADD, INC.  
80 Prospect Street  
Cambridge, Massachusetts  
(617) 661-0165  
Contact: Larry Grossman

ATTORNEY: Mintz, Levin, Cohn, Ferris, Glovsky & Popeo  
One Financial Center  
Boston, Massachusetts 02111  
(617) 542-6000  
Contact: Howard Cohen

ACCOUNTANT: R. Ercolini & Company  
55 Summer Street  
Boston, Massachusetts 02110  
(617) 482-5511  
Contact: Michael Tucci

DEVELOPMENT CONSULTANT: All of the development activities were performed by in-house staff, except for those functions set forth above and the general contracting, which was performed by Barkan Construction Company.

CONSTRUCTION MANAGER: The construction management function was performed by in-house staff.

MARKETING AGENT: The marketing functions were performed by in-house staff.



2. DEVELOPER'S STATEMENT OF QUALIFICATIONS  
AND FINANCIAL RESPONSIBILITY

1. Name and address of the developer:

Douglass Plaza Housing Company I Limited Partnership  
c/o The Boston Land Company  
151 Tremont Street  
Boston, Massachusetts 02111

2. Is the developer or any other member of the joint venture a subsidiary of or affiliated with any other corporation or corporations or any other firm or firms? No.

3. (a) In lieu of the financial statements of the Developer, enclosed please find the MHFA cost certifications for both the rental and the condominium components of the project, which set forth all of the expenditures incurred in connection with development of the project. In addition to the \$4.045 million of development equity, the project has experienced operating losses of approximately \$928,000 during its first year of operation which have been covered by additional cash contributions from the developer. An audited financial statement of operations for calendar year 1990 for both the rental and condominium components of the project will be prepared for submission to MHFA in full compliance with the Agency's guidelines.

(b) The accountant is : R. Ercolini & Co.  
55 Summer Street  
Boston, MA 02110

4. See Form 1 Paragraph 17.

5. The equity for development of the project was contributed by the Owner throughout development of the project, which is now complete. All up front costs have been pre-paid by the Owner.

6. Bank References: Mr. Derek Pollard  
Loan Officer  
Bank of New England  
28 State Street  
Boston, Massachusetts 02109  
(617) 573-2875

7. Has the developer or (if any) the corporation, or any subsidiary or affiliated corporation, or any of the developer's officers or principal members, shareholders or investors, or other interested parties been adjudged bankrupt, either voluntary or involuntary, within the past ten years? No.



8. (a) Undertakings, comparable to the proposed development work, which have been completed by the developer, including identification and brief description of each project and date of completion:

For a listing of comparable developments completed by the developer please see the attached resumes of the partners.

(b) If the developer or any of the principals of the developer has ever been an employee in a supervisory capacity for a construction contractor or builder or undertaking comparable to the proposed development work, name of such employee, name and address of employer, title of position, and brief description of work? None.

9. (a) - (e). Neither the developer, nor a parent corporation, nor a subsidiary, nor an affiliate, nor a principal of the developer participated in the development of the land as a construction contractor or builder.

10. The General Contractor for Douglass Park Apartments and Condominiums was Barkan Construction Company. In addition to Douglass Park Apartments and Condominiums, Barkan served as the General Contractor for the Parkside Condominiums and The Residences at Copley Place, as well as many other commercial and residential projects throughout New England.

11. N/A

12. No member of the development team is or has been employed by the City of Boston or the BRA. One member of the development team, Richard Taylor, was recently named Secretary of Transportation for the Commonwealth of Massachusetts.

13. List the address(es) of all other properties that the Owner(s) or principals of the proposed project own in the City of Boston.

\* Fountain Hill Square. (Certain unsold condominium units)  
Richard Taylor.

Certain individual condominium units at 151 Tremont Street,  
Robert Kargman





Form 3

1. HOUSING DEVELOPMENT BUDGET

-----

See the attached cost certifications submitted for the rental and the condominium components of the project. No profit has been earned on the development. Operating losses for 1990 were approximately \$928,000.



## FORM 4

FINANCING SOURCES  
-----Construction and Permanent Financing  
-----

Project Cost: \$20,860,576 (Rental)  
                   \$5,856,734 (Condo)  
                   -----  
                   \$26,717,310

Developer Equity: \$3,282,146 (Rental)  
                       \$763,115 (Condo)  
                       -----  
                       \$4,045,261

Source of Equity: Developer's Cash Contribution

Syndication Proceeds: \$4,439,731 (net of selling costs, before taxes. see MHFA cost certification).

% Syndicated: 98%

## Loan Sources:

	Source	Amount	Type	Rate	Term
Rental	MHFA 1st Mort Loan	\$14,147,680	Perm.	10.1%	30 Y
	HoDAG Loan	\$3,430,750	Public	*	20 Y
	Equity	\$3,282,146	N/A	N/A	N/A
Condo	MHFA 1st Mort Loan	\$5,093,619	Const. **	9%	4 Y
	Equity	\$763,115	N/A	N/A	N/A

\* The terms of the HoDAG Loan are governed by a Grant Agreement between the City of Boston and the U.S. Dept. of Housing and Urban Development. The interest charged to the project is as follows: 0% years 0-5; 1% years 6-15; 2% years 16-20.

\*\* The first mortgage loan for the condominiums was provided by MHFA on an extended construction basis. The loan is due to expire in October, 1991. However, it is the developer's intent to seek MHFA approval for extension of the condominium loan for an additional two year period to provide sufficient time to weather the current downturn in the residential condominium market. At present, 24 of the units are leased to persons with an option to purchase. Three of the units have been sold. The remaining 6 units are vacant. The outstanding mortgage balance at present is approximately \$4.76 million.



## Financing Structure

---

### Rental:

The MHFA 1st mortgage loan is a 30-year self amortizing loan payable in monthly installments from the net operating income of the project, which for these purpose includes cash contributions from the general partners to satisfy the income shortfalls. It should be noted that 113 of the 146 parking spaces were financed as part of the rental component to the project, in addition to the commercial space.

The HoDAG loan is a second mortgage provided by the BRA with escalating interest charges payable as described above. The loan principal is repaid in the form of a balloon due to the BRA at the end of Year 20, presumably out of any proceeds derived from a sale or refinancing of the project.

### Condominium:

See financing description set forth above with regard to the MHFA loan. It should be noted that 33 of the 146 parking spaces in the underground garage were financed as part of the condominium component to the project.

The three condominium buyers have obtained first mortgage loans through the Bank of Boston First Step Program for first time homebuyers. This program provided the lowest available interest rates in the market combined with the waiver of the majority of standard fees and closing costs on traditional mortgage loans. It is hoped that additional buyers will be assisted through this program or by similar programs offered by other banks in the area, in conjunction moneys from the "soft second" program being formed by the City of Boston and the Executive Office of Communities and Development.



DISCLOSURE STATEMENT

Any person submitting a development proposal to the City of Boston must truthfully complete this statement and submit it prior to being formally designated for any project.

1. Do any of the principals owe the City of Boston any monies for incurred real estate taxes, rents, water and sewer charges or indebtedness?  
No
2. Are any of the principals employed by the City of Boston? If so, in what capacity? (Please include name of agency or department and position held in that agency or department.)  
No
3. Have any of the principals previously owned real estate? If so, when, where, and what type of property?  
Yes. See resume.
4. Were any of the principals ever the owners of any property upon which the City of Boston foreclosed for his/her failure to pay real estate taxes or other indebtedness?  
No
5. Have any of the principals ever been convicted of any arson-related crimes, or currently under indictment for any such crimes?  
No
6. Have any of the principals been convicted of violating any law, code, statute or ordinance regarding conditions of human habitation within the last three (3) years?  
No

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS

14th DAY OF January, 19 91

SIGNATURE:

*Jeffrey M. Goodman, Attorney in Law for Arthur D. White*

ADDRESS:

c/o The Boston Land Co, 151 Tremont St, Boston, 02111





FORM 6

AFFIRMATIVE MARKETING PLAN  
-----

See the attached HUD-approved affirmative marketing plan submitted by the developer at the time of the construction loan commitment. At present, approximately 55-60% of the residents at Douglass Park Apartments are of African-American, Asian, and Hispanic origins.



FORM 7. NON-DISCRIMINATION STATEMENT

As a condition of receiving NHT/BRA-controlled funds, land or other benefits, I, Arthur D. Ullian, G.P. agree not to discriminate or permit discrimination upon the basis of race, color, sex, religion, national origin, source of income, or presence of children (except in the case of an elderly project) in the lease, rental, or use and occupancy of the property located at 650 Columbus Ave, 801 Tremont St, 3 Douglass Park.

Furthermore, I agree to comply with the attached Affirmative Marketing Plan and to maintain a record of all newspaper advertisements, outreach letters, translations and leaflets. These will be available for review the NHT/BRA upon request.

I understand that I shall be able to proceed with completion of my project if I have taken every step outlined in the City-approved Affirmative Marketing Plan. Compliance shall be determined by the Boston Fair Housing Commission (BFHC). If I have not adequately complied with the City-approved plan, I shall be required to conduct additional outreach and/or I may be denied an occupancy permit for my project.

DOUGLASS PLAZA HOUSING CO.

*Jeffrey M. Friedman, Attorney in fact for*  
*Arthur D. Ullian*  
*Arthur D. Ullian*  
owner Arthur D. Ullian

January 14, 1991

Date







**FILED**  
MAR 22 1989  
SECRETARY OF STATE  
CORPORATION DIVISION

DOUGLASS PLAZA ASSOCIATES PHASE ONE LIMITED PARTNERSHIP

AMENDED AND RESTATED

CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP





		<u>Page</u>
5.4	Instruments Evidencing Transfer of a Partner's Interest .....	16
5.5	Substitute Partners .....	16
5.6	Transfer of Capital Stock of a Partner .....	17
5.7	Retirement of a General Partner .....	17
5.8	Substitution of a Corporate General Partner .....	18
5.9	Liability of Retiring General Partner ..	19
5.10	Retirement of a Special Limited Partner or an Original Limited Partner .....	19
ARTICLE VI	<u>Dissolution and Termination</u> .....	20
6.1	Events of Dissolution .....	20
6.2	Managing General Partner's Right to Purchase Partnership Business and Assets .....	21
6.3	Liquidation .....	21
ARTICLE VII	<u>Books of Account and Reports; Fiscal Matters; Agent for Service of Process</u> .....	22
7.1	Partnership Records and Books of Account .....	22
7.2	Fiscal Year .....	23
7.3	Bank Accounts .....	23
7.4	Tax Returns .....	23
ARTICLE VIII	<u>Amendments</u> .....	24
8.1	Amendment to Certificate .....	24
8.2	Amendment to Agreement .....	24
ARTICLE IX	<u>Miscellaneous</u> .....	24
9.1	Notices .....	24
9.2	Certificates .....	25
9.3	Successors and Assigns .....	25
9.4	Power of Attorney .....	25
9.5	Partition .....	25
9.6	No Waiver .....	26
9.7	Captions .....	26
9.8	Construction of Agreement .....	26
9.9	Counterparts .....	26
9.10	Applicable Law .....	26
9.11	Further and Additional Documents .....	26
9.12	Creditors .....	27
9.13	Definitions .....	27



DOUGLASS PLAZA ASSOCIATES PHASE ONE LIMITED PARTNERSHIP

AMENDED AND RESTATED  
CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP

PRELIMINARY STATEMENT

A Certificate and Agreement of Limited Partnership of Douglass Plaza Associates Phase One Limited Partnership (the "Partnership"), by and among the General Partners and the Original Limited Partners, was entered into as of October 30, 1987, and filed with the Secretary of State of the Commonwealth of Massachusetts (the "Secretary") on November 2, 1987. The purposes of this Amended and Restated Certificate and Agreement of Limited Partnership of the Partnership are (i) to provide for the admission to the Partnership of the Concord Baptist Church and the Concord Baptist Church Housing and Economic Development Corp., as Special Limited Partners of the Partnership (collectively the "Special Limited Partners"); (ii) to set out more fully the rights, obligations, and duties of the General Partners and the Limited Partners; and (iv) to amend and restate the Original Partnership Agreement, including Schedule A thereto, in its entirety.

NOW, THEREFORE, it is hereby agreed that the Original Partnership Agreement is amended and restated in its entirety as follows:

This AMENDED AND RESTATED CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP, dated as of March 3, 1989 (this "Agreement"), by and among the persons set forth in Schedule A hereto as general partners (the "General Partners"), the persons set forth in Schedule A hereto as special limited partners (the "Special Limited Partners"), and the persons set forth in Schedule A hereto as original limited partners (the "Original Limited Partners"; the Special Limited Partners and the Original Limited Partners are sometimes collectively referred to herein as the "Limited Partners"; the General Partners, the Special Limited Partners and the Original Limited Partners are sometimes collectively referred to herein as the "Partners").



## ARTICLE I

### CONTINUATION, NAME, PURPOSES, POWERS AND TERM

#### SECTION 1.1 Continuation.

(a) The parties hereto continue a limited partnership formed pursuant to the provisions of the Uniform Act. The General Partners shall promptly file an amended certificate of limited partnership (the "Certificate," which term shall include this Agreement when filed as an amended certificate) with the Secretary in such form as shall be necessary under the laws of the Commonwealth of Massachusetts to give effect to the provisions of this Agreement and to continue the Partnership as a limited partnership under the Uniform Act.

(b) The Special Limited Partners listed in Schedule A attached hereto have made their respective Capital Contributions to the Partnership as specified in Column III of Schedule A hereto and are hereby admitted as Special Limited Partners, effective as of the date hereof.

SECTION 1.2 Name, Location, Agent and Filing of Certificate and Agreement. The Partnership is and shall be conducted under the name of Douglass Plaza Associates Phase One Limited Partnership. The principal office of the Partnership is located at 151 Tremont Street, Boston, Massachusetts. Upon notice to the other Partners, the Managing General Partners may at any time change this location or establish additional offices. The agent for service of process on the Partnership is Robert M. Kargman, a Massachusetts resident with a place of business at 151 Tremont Street, Boston, MA.

The General Partners shall promptly file and record this Certificate and Agreement and all amendments hereto required by law to be filed hereafter for any reason, in the office or offices within the Commonwealth of Massachusetts in which this Agreement is required to be filed and recorded under the laws of the Commonwealth of Massachusetts.

The Partners shall do any and all other acts and things requisite for the formation, perfection and continuing maintenance of the Partnership as a limited partnership pursuant to the laws of the Commonwealth of Massachusetts.

#### SECTION 1.3 Purposes and Powers.

(a) The purposes of the Partnership are:

- (i) to invest, directly or indirectly, in a certain parcel of land located in the City of Boston, Massachusetts consisting of the "Phase One" portion of Boston Redevelopment Authority South



End Urban Renewal Parcel 16 (which portion is more particularly described in Exhibit 1 attached hereto and denoted thereon and referred to herein as the "Phase One Parcel") and to improve, construct, own, rehabilitate, develop (including, without limitation, develop all or any part of the Phase One Parcel as one or more condominiums), finance, lease, maintain, operate, convey and otherwise deal with the Phase One Parcel as a mixed use complex of rental and "for sale" housing, commercial space, parking garage and ancillary facilities financed, in whole or in part, by the Massachusetts Housing Finance Agency ("MHFA"), MHFA Project Numbers 85-028-S (rental) and 87-011-N (condominiums) (collectively, the "Phase One Project"); and

- (ii) to serve as a general partner of Douglass Plaza Housing Company I Limited Partnership (the "Operating Partnership"), a Massachusetts limited partnership which currently owns the Phase One Parcel.

(b) In furtherance of the above purposes, the Partnership shall have the power:

- (i) On its own behalf and/or on behalf of the Operating Partnership, to borrow (from any source, including without limitation the Partners or their respective Affiliates) or lend money, to make, issue and extend notes, bonds, debentures, obligations, and evidences of indebtedness of all kinds, including extensions, renewals and extensions thereof, whether secured by mortgage, pledge, or otherwise, without limit as to amount, and to secure the same by mortgage, pledge, or contracts of every kind, and description, and to pledge the rights of the Partnership to receive syndication proceeds as security for any obligations of the Partnership in furtherance of any and all of the purposes of the Partnership.

- (ii) On its own behalf and/or on behalf of the Operating Partnership, to acquire the Phase One Parcel and any additional property, real or personal, in fee or under lease, or any rights therein or appurtenant thereto, necessary or convenient for the construction and operation of the Phase One Project, and to acquire and grant easements for the purposes of acquiring services and utilities for the Phase One Project, and to receive, take by grant, lease or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with said Phase One Parcel or any portion thereof.

- (iii) In accordance with Section 3.1(a)(5) hereof, on its own behalf and/or on behalf of the Operating Partnership, to employ or engage a management agent or company to manage, a





leasing agent or company to lease, a maintenance agent or company to maintain, and a registered broker dealer in connection with the syndication of, all or any portion of the Phase One Project (including an agent or company which may be owned in whole or in part, through a joint venture or otherwise, by any of the Affiliates) and to pay reasonable compensation for such services.

(iv) To carry on any business, operation or activity referred to in the foregoing paragraphs either alone or in conjunction with, or as a partnership, joint venture or other arrangement with, any corporation, partnership, association, trust, firm or individual.

(v) To carry on any other activities necessary to, or in connection with, or incidental to, the accomplishment of the purposes of the Partnership, so long as such activities may be lawfully carried on or performed by a partnership under the laws of the Commonwealth of Massachusetts.

**SECTION 1.4 Term.** The term of the Partnership commenced on October 30, 1987, and shall continue in full force and effect for a term of forty (40) years thereafter unless the Partnership is earlier terminated in accordance with this Agreement.

**SECTION 1.5 Title to Partnership Property.** All property owned by the Partnership, whether real or personal, tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner, individually, shall be considered the owner of such property.

## ARTICLE II

### CAPITAL

#### **SECTION 2.1 Capital of the Partnership.**

(a) The capital of the Partnership shall be the aggregate amount of cash and property contributed by the Partners. The names of the persons contributing such cash and property are set forth in Schedule A hereto. Schedule A shall be amended from time to time to reflect the withdrawal or admission of Partners, any changes in the Partnership Interest held by a Partner arising from the transfer of any part of a Partnership Interest to or by such Partner and any changes in the amounts contributed or agreed to be contributed by any Partner.

(b) A capital account shall be established for each Partner. There shall be credited to each Partner's capital account the amount of his or its Capital Contributions and his or its share of Profits of the Partnership. There shall be



charged against each Partner's capital account the amount of all distributions made by the Partnership to such Partner and his or its share of any Losses of the Partnership. The capital account of any Partner, including any Substitute Partner who shall receive an interest in the Partnership or whose Partnership Interest shall be increased by the transfer to him of all or part of the Partnership Interest of another Partner, shall be appropriately adjusted to reflect such transfer.

(c) No interest shall be paid on any capital contributed to the Partnership.

(d) No Partner shall have the right to withdraw the capital contributed by him to the Partnership or have any right to receive any funds or property of the Partnership except as specifically provided in this Agreement.

SECTION 2.2 Capital Contributions. The Partners have made or agreed to make contributions to the Partnership at the times and in the amounts set forth opposite their names in Column III of Schedule A upon the execution by them of this Agreement.

SECTION 2.3 Loans by General Partners to the Partnership. In the event that (i) the Partnership's funds are insufficient to meet its costs, expenses, obligations, liabilities and charges, or to make any expenditure authorized by this Agreement; or (ii) the Partnership is required, or the General Partners deem it appropriate, to fund costs, expenses, obligations, liabilities or charges of the Operating Partnership, and additional funds are not available from third parties on terms acceptable to the Managing General Partners, the General Partners may (but shall not be required to) advance such funds to the Partnership (the "General Partner Loans"). All amounts so advanced by any Partner shall take the form of a loan and shall bear interest at a rate equal to the greater of (i) interest computed at a rate equal to the Large Prime Rate, as established from time to time by Bank of New England, N.A., plus two percent (2%) or (ii) costs incurred in furnishing such funds to the Partnership (to the extent permitted by law). Such loans will be repaid out of net cash flow or other cash of the Partnership prior to any other distributions to the Partners from any source whatsoever.

### ARTICLE III

#### RIGHTS, POWERS AND OBLIGATIONS OF PARTNERS

##### SECTION 3.1. Action by General Partners.

(a) Subject to the terms and provisions of this Agreement, the General Partners shall have the exclusive management and control of the business of the Partnership and shall have all



powers necessary, convenient or appropriate to carry out the purpose and business of the Partnership referred to in Section 1.3 and, subject only to the limitations specifically set forth in this Agreement, shall possess and enjoy all the rights and powers of a partnership without limited partners to the extent permitted by Massachusetts law. Without limiting the generality of the foregoing, the General Partners are hereby authorized and empowered on behalf of the Partnership when acting for its own account to:

- (1) enter into, perform, modify, supplement or terminate any contract necessary to, in connection with or incidental to, the accomplishment of the purposes of the Partnership specifically including, but not limited to, notes, mortgages, construction contracts, all documents evidencing, securing or incidental to any mortgage loan or governmental subsidy program and all agreements with mortgagees, which may be necessary or desirable to accomplish the purposes set forth in Section 1.3;
- (2) acquire and dispose of the Phase One Parcel and any additional property, real or personal, or any portion thereof, in fee or under lease, or any rights or interest therein or appurtenant thereto, necessary or convenient for the construction and operation of the Phase One Project or any portion thereof, and to acquire and grant easements for the purpose of acquiring services and utilities for the Phase One Project or any portion thereof;
- (3) subject to any applicable regulations, to borrow money and to issue evidences of indebtedness and to secure the same by mortgage, pledge or other lien on the Phase One Parcel and all improvements constructed thereon, or any other assets of the Partnership, in furtherance of any and all of the purposes of the Partnership;
- (4) prepay in whole or in part, refinance, recast, increase, modify or extend any mortgage affecting the Phase One Parcel and in connection therewith to execute any extensions, renewals, or modifications of any mortgage affecting the Phase One Parcel;
- (5) employ a management company and/or leasing company to maintain, manage and/or lease the portion of the Phase One Project or any portion thereof or engage a registered broker dealer in connection with the syndication of all or any



portion of the Phase One Project (including a management company, leasing company and/or broker dealer, any or all of which may be owned by any of the Affiliates of any of the General Partner), and to pay reasonable compensation for such services; and

- (6) carry on any other activities necessary to, or in connection with, or incidental to, the accomplishment of the purposes of the Partnership, so long as such activities may be lawfully carried on or performed by a partnership under Massachusetts law.

(b) The General Partners shall have the right at any time and from time to time without requirement of any approval of the the Limited Partners to amend this Agreement and admit to the Partnership as Substitute Limited Partners such persons as may, in consideration of their agreement to make capital contributions to the Partnership, acquire Substitute Limited Partnership Interests, each of whom shall in connection with such agreement agree to be fully bound by the provisions of this Agreement.

(c) Each Limited Partner hereby constitutes and appoints the Managing General Partners its true and lawful attorney-in-fact, with full power of substitution and hereby empowers the Managing General Partners with a power of attorney to execute any such amendment to this Agreement so admitting Substitute Limited Partners or any other amendment which a majority in interest of the Managing General Partners deem appropriate, in their sole discretion, including amendments altering interests of Partners in the Partnership; provided, however, that no such admission or amendment may alter the Partnership Interests of any of the General Partners, the Special Limited Partners or the Original Limited Partners, or the allocations and distributions of any of the General Partners, the Special Limited Partners or the Original Limited Partners, without the consent of such General Partners, Special Limited Partners or Original Limited Partners, as the case may be, except that any such amendment may change the distribution of Cash Flow available for distribution and other distributions of cash, change allocations of Profits, Losses and Credits of the Partnership and make such other similar changes as a majority in interest of the Managing General Partners determine to be appropriate, in their sole discretion, so long as any such amendment does not change the ratio that the percentage of allocations and distributions of the Partnership theretofore applicable to the Managing General Partners bears to the percentage of the allocations and distributions of the Partnership theretofore applicable to the class comprised of the General Partners, the class comprised of Special Limited Partners and/or the class comprised of the Original Limited





Partners; and to execute and file with the Secretary any amendment to the Certificate of Limited Partnership deemed necessary or appropriate by the Managing General Partners in connection with such amendment or admission. It is understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked.

(d) The General Partners shall, in their sole discretion, make all elections permitted by the Internal Revenue Code of 1954, as amended.

(e) Except as specifically limited herein or provided to the contrary herein, the General Partners shall have the full, exclusive, and complete right to direct and control the business of the Partnership. The General Partners have the authority to execute any checks, documents, agreements, or other instruments.

SECTION 3.2. Partners' Activities and Contracts With Affiliates. The General Partners may contract with "Affiliates" of any of the General Partners for any property or services of any kind, nature or type required by the Partnership. "Affiliates" of the General Partners shall include any person, firm or entity (i) which owns or is owned by any of the General Partners in whole or in part; (ii) which is the parent, subsidiary, or affiliate of any of the General Partners; (iii) in which any of the General Partners has any interest whatsoever; or (iv) from which any of the General Partners shall receive any remuneration, directly or indirectly.

SECTION 3.3. Indemnification of General Partners. Each of the General Partners (including those General Partners designated as Managing General Partners) is each hereby indemnified by the Partnership for any act performed by him within the scope of the authority conferred on him by this Agreement, except for acts of willful misconduct, gross negligence, or misrepresentation.

SECTION 3.4. Liability of General Partners. The General Partners (including those General Partners designated as Managing General Partners) shall not be liable, responsible or accountable in damages or otherwise to the Partners for, and the Partnership shall indemnify and save harmless such General Partners from, any loss or damage incurred by reason of any act or omission performed or omitted in good faith on behalf of the Partnership and in a manner reasonably believed to be within the scope of the authority granted by this Agreement and in the best interests of the Partnership, provided that (a) such General Partner was not guilty of gross negligence or willful misconduct with respect to such act or omission, and (b) the satisfaction of any indemnification and any saving harmless shall be from and limited to Partnership assets, and the Partners shall not have any personal liability on account



thereof. Any act or omission performed or omitted by any of the General Partners on advice of legal counsel or an independent consultant shall be conclusively deemed to have been performed or omitted in good faith.

SECTION 3.5. Management of Partnership Business and Powers of the Managing General Partners. The powers and duties of the General Partners hereunder shall be exercised in the first instance by a majority in interest of the Managing General Partners, if such a designation is in effect, who, subject to the terms and provisions of this Agreement, shall manage the business affairs of the Partnership. Any Managing General Partner may delegate his authority as a Managing General Partner to any other Managing General Partner or to any Affiliate of a Managing General Partner.

The Managing General Partners shall endeavor insofar as reasonably possible to consult with all the General Partners prior to taking actions which materially affect the Partnership. In the event all General Partners do not agree on a particular course of action or in the event that a majority in interest of the Managing General Partners, after endeavoring to consult with all General Partners, are unable to arrive at a decision as to a particular course of action, the powers and duties of the General Partners shall be exercised by the Managing Partners on behalf of those General Partners with a majority in interest of the Partnership Interests held by the General Partners.

The delegation by the General Partners of their authority to the Managing General Partners, or by the Managing General Partners to any other Person, shall not relieve the General Partners of primary responsibility for the conduct of the business of the Partnership or for any liability or obligation under this Agreement. If for any reason no designation of Managing General Partners is in effect, or in the event that two or more of the current Managing General Partners are disabled or shall cease to be General Partners, the powers and duties of the General Partners shall be exercised by those General Partners who are acting with the authority of a majority in interest of the Partnership Interests held by the remaining General Partners.

The General Partners hereby designate Robert M. Kargman, Arthur D. Ullian and Lawrence R. Smith as the Managing General Partners.

Every deed, mortgage, note, letter of credit, assignment, pledge, transfer, extension, release or discharge and other writing, instrument, contract or agreement or document executed on behalf of the Partnership by not less than two of the designated Managing General Partners at the time, if by the records on file with the Secretary they appear to be General



Partners hereunder, or if otherwise executed by the General Partners acting with the authority of a majority in interest of the Partnership Interests held by the remaining General Partners, shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of the execution and delivery thereof (i) the Partnership was in existence; (ii) this Agreement had not been amended in any manner so as to restrict the delegation of authority among General Partners (except as shown in certificates or other instruments duly filed with the Secretary); (iii) the execution and delivery of such instrument was duly authorized by the General Partners; (iv) that all conditions precedent to action by the General Partners had been fulfilled; and (v) that such instrument is valid, binding, effective and enforceable.

SECTION 3.6. Services of the General Partners. During the existence of the Partnership, the General Partners shall devote such time and effort to the Partnership business as it may determine to be necessary to promote adequately the interests of the Partnership and the mutual interests of the Partners; provided, however, that it is specifically understood and agreed that the General Partners shall not be required to devote full time to Partnership business. The General Partners shall receive no compensation for services hereunder, provided, however, that Robert M. Kargman, Arthur D. Ullian and/or their respective Affiliates shall be reimbursed for overhead and out-of-pocket expenses incurred in connection with the business of the Partnership upon presentation of receipts or other satisfactory evidence in support thereof.

SECTION 3.7. The Limited Partners. The Limited Partners shall have no right to participate in the management of or otherwise take part in the control of the Partnership business or affairs. The Limited Partners shall have no authority or power to bind the Partnership.

SECTION 3.8. Other Interests of Partners. Any of the Partners may engage in or possess an interest in other business ventures of every nature and description (except those in connection with the Partnership unless otherwise permitted by this Agreement), independently or with others, including, but not limited to the real estate business in all of its phases. Neither the Partnership nor the other Partners shall have any rights in and to such independent ventures or the income or profits derived therefrom.



## ARTICLE IV

### PROFITS AND LOSSES, DISTRIBUTIONS

#### SECTION 4.1. Profits and Losses.

(a) Except as set forth below in this Section 4.1, the Profits, Losses and tax credits of the Partnership for each fiscal year, shall be determined as of the end of such fiscal year and allocated to the Partners in accordance with the Percentages set forth in Column II of Schedule A.

(b) Profits and tax credit recapture arising during any fiscal year, or portion thereof, of the Partnership from the sale, exchange or other disposition of all or a substantial part of the assets of the Partnership (a "Capital Transaction") shall (after adjusting capital accounts and subject to the provisions hereinafter set forth in this Section) be allocated among the Partners as follows:

First, an amount of such Profits equal to the aggregate negative balances (calculated as though cash from such capital transaction had not yet been distributed), if any, in the Capital Accounts of the Partners shall be allocated to the Partners in proportion to their respective negative Capital Account balances until all such Capital Accounts shall have a zero balance; provided, however, that no such Profits shall be allocated to any partner pursuant to this clause First, once his Capital Account has been brought to zero; and

Second, in accordance with the percentages set forth in Column II of Schedule A.

(c) To the extent that Losses from a Capital Transaction occur in any fiscal year, or portion thereof, of the Partnership, they shall be allocated as follows:

First, to the Partners' Capital Accounts in an amount equal to the aggregate positive balance, if any, of their Capital Accounts, in proportion to their respective positive Capital Account balances, until all such Capital Accounts shall have a zero balance;

Second, to the Partners the amount necessary to increase Capital Accounts to equal the amounts distributable to them in their capacities as Partners pursuant to and in the priority of Sections 4.3, Clauses Second through Fifth; and

Third, in accordance with the Percentages set forth in Column II of Schedule A.





SECTION 4.2. Cash Flow of the Partnership. The term "Cash Flow available for distribution" shall mean the annual net cash flow of the Partnership available for distribution to the Partners as determined for each fiscal year by the General Partners, after taking into account Partnership liabilities, including without limitation repayment of any General Partner Loans and reimbursement to the General Partners of costs associated with providing such Loans to the Partnership, and reserves for contingencies, working capital and capital expenditures as appropriate, and the Cash Flow available for distribution shall be distributed to the Partners in accordance with the Percentages set forth in Column I of Schedule A.

SECTION 4.3. Net Cash Proceeds from Sale. All cash available from the net cash proceeds resulting from the sale, exchange, refinancing, condemnation (or similar eminent domain taking), casualty or other disposition of all or a substantial part of the Partnership's property, or from the liquidation of the property of the Partnership following a dissolution of the Partnership, and all cash other than cash distributed pursuant to Sections 4.2 or 4.4 which is determined by the General Partners to be available for distribution, shall be distributed and/or applied in the following order of priority:

First, to the payment of all debts and liabilities of the Partnership then due (or required to be paid by reason of the event referred to herein) other than those debts and obligations specifically referred to below;

Second, to the repayment of any General Partner Loans, including reimbursement to the General Partner of an amount equal to the greater of (i) interest computed at a rate equal to the Large Prime Rate, as established from time to time by Bank of New England, N.A., plus two percent (2%) or (ii) costs incurred in furnishing such funds to the Partnership (to the extent permitted by law);

Third, to the creation of any reserve which the General Partners may deem reasonably necessary to provide for contingent or unforeseen liabilities or obligations of the Partnership; provided, however, that at the expiration of such period of time as the General Partners shall deem advisable, the balance of such reserves remaining after the payment of such contingencies shall be distributed in the manner hereinafter set forth in this Section 4.3;

Fourth, to each Partner the amount of his Capital Contribution; and

Fifth, to the Partners in accordance with their respective Percentages as set forth in Column I of Schedule A.



SECTION 4.4. Allocation of Fee Payments. All fees and other compensation designated by contract or other arrangement to be paid to the Partnership, or to the General Partners or any Affiliate of the General Partners, in connection with the development, construction, rehabilitation and operation of the Phase One Parcel Project shall be allocated and paid in each case in accordance with the Percentages set forth in Column I of Schedule A; provided, however, that:

(a) in the event that any Development Fees payable to the Partnership or its Affiliate are funded from "Credit Adjuster Advances" (as such term is defined in the Amended and Restated Certificate and Agreement of Limited Partnership of the Operating Partnership) made by one or more of the General Partners, the amount of such fees so funded by Credit Adjuster Advances shall first be allocated and paid solely to each of the General Partners that have funded such Credit Adjuster Advances, in an amount equal to the amount of any such Credit Adjuster Advances funded by him, and any remaining portion of such Development Fees funded from Net Syndication Proceeds shall be allocated and paid in accordance with the percentages set forth in Column I of Schedule A hereto; and

(b) any reimbursement for developer's overhead and organizational costs from funds provided in or permitted by any MHFA loan to the Partnership or any Affiliate of the Partnership, any property management or maintenance fees or other maintenance, management or sales (or re-sales) fees payable to Douglass Plaza Management Company, New Street Management Company, Camden Street Management Company (the foregoing being joint ventures of Coastal Property Management Corp. and Barclay Management Co., affiliates of certain of the general partners) or any other affiliate of Messrs. Kargman and Ullian, any syndication or similar fees payable to Boston Investment Securities Corporation, Boston Investment and Financial Services Corp., or any other affiliate of Messrs. Kargman and Ullian, and rent-up, subsequent rental, and marketing or condominium construction supervision or similar fees approved by MHFA shall be allocated and paid one hundred percent (100%) to Messrs. Kargman and Ullian and/or their respective Affiliates, as designated under such contract or arrangement.

SECTION 4.5. Allocation of Distributions Among Partners. All distributions to the Partners shall be charged to their respective capital accounts. All distributions to the Partners pursuant to the provisions of Sections 4.2 and 4.3 shall be treated as having been made and charged to their respective capital accounts prior to the allocation of Profits.



## ARTICLE V

### TRANSFERS OF PARTNERSHIP INTERESTS; RETIREMENT OF PARTNERS

#### SECTION 5.1. Limitations on Assignability.

(a) No Partner shall have the right to transfer his Partnership interest in any particular Partnership property, except as otherwise provided in this Article V.

(b) Except for the rights of assignment and encumbrance described in this Article, and except as otherwise provided in this Agreement, no Partner shall have the right to sell, assign, mortgage or otherwise encumber all or any part of his interest in the Partnership or in its assets or property (except to an Affiliated Corporate General Partner), and no Partner shall enter into an agreement as a result of which any other person, firm or corporation (other than an Affiliated Corporate General Partner) shall become interested with him in the Partnership (except that the foregoing shall not limit any transfer or assignment of a Limited Partner's interest in the Partnership by reason of death or disability). The foregoing shall include, without limitation and whether voluntary or by operation of law, the sale, transfer, assignment, encumbrance or other conveyance of the Partnership interest or sale, transfer, assignment, encumbrance or other conveyance of any interest in the Partners.

(c) The Partnership shall be entitled to treat the record owner of any Partnership Interest as the absolute owner thereof in all respects, and shall incur no liability for the allocation of net profits or net losses, or the distribution of cash or other property, made in good faith to such owner until such time as a written assignment of such interest has been received and accepted by the General Partners and recorded on the books of the Partnership.

#### SECTION 5.2. Sale, Transfer or Assignment of a Partner's Interest.

(a) Except as permitted in this Agreement, no Partner shall have the right to sell, transfer or assign any part or all of its Partnership Interest (including, without limitation, any interest in a Partner) without the selling Partner first offering to the remaining Partners, or if the remaining Partners so elect, to the Partnership, the opportunity to buy all or any part of its interest in the Partnership on the terms set forth below in Section 5.4 of this Agreement; and if such offer is accepted by the remaining Partners or the Partnership, as the case may be, the Interest shall be sold and assigned by the selling Partner to the remaining Partners in such proportion as the remaining Partners shall agree, or otherwise



in proportion to their relative Partnership Interests, or to the Partnership, as the case may be, in accordance with the terms of such offer. If, however, such offer is not accepted by the remaining Partners or the Partnership within ninety (90) days from receipt, it shall be deemed rejected. In such event, the selling Partner may, subject to the conditions set forth in Section 5.2(b) below, sell its Interest to any other person; provided that, if the selling Partner proposes to sell its Interest for less than its Appraisal Value (as determined in accordance with Section 5.3), it shall first offer to sell its Interest to the remaining Partners for such price in the manner set forth above.

(b) Subject to the provisions of Section 5.2(a), any Special Limited Partner or Original Limited Partner may assign all or any part of its/his respective Partnership Interest if:

(i) the assignor shall, at the request of the General Partner, deliver to the Managing General Partners an opinion of counsel, in form and substance satisfactory to the Managing General Partners, that such assignment and any offerings made in connection therewith are in compliance with applicable federal and state securities laws;

(ii) the assignee shall execute a statement that he is acquiring such Partnership Interest or part thereof for his own account for investment and not with a view to the distribution or resale thereof; and

(iii) the Managing General Partners shall consent to such assignment (which consent may not be unreasonably withheld), except that consent shall be withheld if, in the opinion of counsel designated by the Managing General Partners, such assignment would result in the termination of the Partnership under the Internal Revenue Code of 1954, as amended.

If the foregoing conditions are not complied with, the Partnership need not recognize such assignment for any purpose whatsoever; provided, however, that, notwithstanding the foregoing provisions, any Partner may assign the financial benefits of his partnership interest so long as such assignment does not grant the assignee thereunder the right to become a Partner without the approval of the Managing General Partners as set forth herein.

SECTION 5.3. Fair Market Value of a Partner's Partnership Interest. The fair market value of a Partner's Partnership Interest being sold shall be mutually determined by the Partners. If the Partners cannot agree upon the fair market value of a Partner's Partnership Interest, such value shall be determined by an independent appraisal of the fair market value of the Partnership Interest as of the date the Partnership Interest was offered for sale (the "Appraised Value").





Such independent appraisal shall be made by one (1) appraiser who shall be mutually appointed by the Partners. If the Partners fail to agree upon the appointment of an appraiser within thirty (30) days of the date the Partnership Interest was offered for sale, an appraiser shall be appointed by the Boston Office of the American Arbitration Association. The finding of the appraiser shall be a final and conclusive determination of the fair market value of the Partnership. The appraiser may act with or without a hearing. The cost of any appraisal made pursuant to this Section 5.3 shall be borne by the Partner wishing to transfer his Partnership Interest. A statement showing such Appraised Value shall be delivered by the appraiser to each Partner.

The fair market value of any Partnership Interest shall be the proportionate part of the fair market value of all Partnership assets and liabilities attributable to such Partnership Interest, less any unpaid capital contributions and any contingencies and accrued interest thereon.

**SECTION 5.4. Instruments Evidencing Transfer of a Partner's Interest.** Simultaneously with the delivery by the remaining Partner to the selling Partner of the initial payment described above, the selling Partner shall deliver to the remaining Partner appropriate duly executed instruments of transfer and assignment, assigning and transferring good and marketable title to the entire Partnership Interest thus purchased from such Partner free from any liens or encumbrances or rights of others therein. The Partner's entire Partnership Interest thereby transferred shall comprise all of its right, title and interest in and to the Partnership, including but not limited to the capital account of the selling Partner as of the date of the sale and all of his Partnership Interest. Upon the consummation of any such sale to another Partner, any obligation to pay the unpaid balance of any Capital Contribution, and accrued interest thereon, attributable to the Partnership Interest being sold shall be deemed to be fully satisfied.

**SECTION 5.5. Substitute Partners.** An assignee of a selling Partner's Interest who is not already a Partner, may become a substitute Partner of the same class as the selling Partner if:

- (i) the selling Partner grants such right in the instrument of assignment;
- (ii) all of the General Partners and the Original Limited Partners consent in writing to such substitute Partner,
- (iii) the assignee executes an instrument reasonably satisfactory to the Managing General Partners accepting and adopting the terms and provisions of this Agreement, and



(iv) such Person agrees, at the option of the Partnership, to pay any filing fees, reasonable counsel fees, and other reasonable expenses in connection with his becoming a Substitute Partner hereunder.

An Assignee of a Partnership Interest, who does not become a Substitute Partner in accordance with this Section 5.5 and who desires to make a further Assignment of his Interest shall be subject to all provisions of this Section 5 to the same extent and in the same manner as any Partner of his class desiring to make an assignment of his Partnership interest. Failure or refusal of the General Partners to admit an assignee as a substitute Partner shall in no way affect the right of such assignee to receive the share of the capital, Profits, Losses, allocations, distributions of Cash Flow and net cash proceeds to which his predecessor in interest was entitled. The Partnership Interest held by an assignee of a Limited Partner who is not admitted as a Substitute Limited Partner shall not be counted for the purpose of determining whether the requisite consent of the Limited Partners, or any class of Limited Partners, has been given to any proposed action for which consent of Limited Partners, or any such class of Limited Partners, is required. Until the consent to the admission of a Substitute General Partner has been obtained from all Partners, any person who acquires, in any manner whatsoever, the Partnership Interest or any portion thereof of a Retired General Partner, shall be admitted to the Partnership as Limited Partner. As a Limited Partner, such Person shall have no right to participate in the management of the affairs of the Partnership, and shall not be entitled to a portion of the Profits, Losses, Credits or net cash proceeds payable to the class comprised of Limited Partners. Such Person shall, however, acquire the share of the capital, Profits, Losses, Credits (and Credit recapture, if any, pursuant to Section 3.1(b)) and distributions of net cash proceeds which were formerly allocable or distributable to the Retired General Partner from whom he received his Partnership Interest.

**SECTION 5.6. Transfer of Capital Stock of a Partner.** No holder of the capital stock of a corporate Partner shall have the right to sell, transfer, encumber or assign any or all of such stock without the selling stockholder first offering to sell all of such Partner's Partnership Interest to the other Partners on the same terms as provided in Section 5.2 with the purchase price being the Appraisal Value of the Partnership Interest of the Partner controlled by such selling stockholder as calculated under Section 5.3 above.

**SECTION 5.7. Retirement of a General Partner.** Notwithstanding any contrary provision of this Agreement (including, without limitation, Section 6.1(a)(iv) hereof), the remaining General Partners hereby agree to continue the business of the Partnership upon the Retirement of either or



both of Richard L. Taylor or Lawrence R. Smith as a General Partner of the Partnership, and such Retirement shall not have the effect of dissolving or terminating the Partnership so long as there remains at least one General Partner of the Partnership. Upon the Retirement of any General Partner, such Retiring General Partner's interest in the Partnership shall automatically become that of a "Class B Special Limited Partner" (without the necessity of receiving the consent of any other Partner or of executing or delivering any other document, instrument or certificate). As a Class B Special Limited Partner, such Retiring General Partner shall cease to have any right to participate in any manner in the management or control of the business of the Partnership and shall have no right to vote or otherwise participate as an Original Limited Partner or Special Limited Partner in consent process provided for herein; provided, however, that such Retiring General Partner's interest in the Profits, Losses and Credits and cash distributions (including Cash Flow available for distribution, earned but unpaid fees and net cash proceeds available for distribution pursuant to Section 4.3 hereof) shall remain unchanged. The estate of the Retired General Partner shall be liable for all of the Retired General Partner's liabilities and obligations to the Partnership as a General Partner. The legal representative, if any, of such Retired General Partner shall be the assignee of such Retired General Partner's interest in the Partnership and may become a Substitute Special Limited Partner upon compliance with the provisions of Section 5.5 hereof.

SECTION 5.8 Substitution of a Corporate General Partner. Notwithstanding the provisions of Section 5.7, if in the opinion of Counsel to the Partnership the Regulations permit a business corporation formed pursuant to Chapter 156 or 156B of the General Laws of the Commonwealth of Massachusetts to be a General Partner of the Partnership, then and in such event, the Partners hereby unanimously consent to the substitution for either or both of Messrs. Kargman and Ullian, in their respective capacities as General Partners, of one or more corporations which are "Qualified Substitute Corporate General Partner" as defined in this Section 5.8. In the event that any Qualified Substitute Corporate General Partner is admitted as a substitute General Partner, then, notwithstanding any other provision of this Article V, the Partnership Interest of the Retiring General Partner(s) shall be transferred to such Qualified Substitute Corporate General Partner(s) upon its/their written assumption of the obligations of such Retiring General Partner(s) under this Agreement. A "Qualified Substitute Corporate General Partner" shall mean any corporation that is Affiliated with Boston Investment & Development Company or either of Messrs. Kargman and Ullian, provided that on the date of admission such corporation shall (i) warrant and represent that it has, and shall also agree to maintain, the skill, knowledge and experience necessary to



carry out the duties of a General Partner of the Partnership; (ii) assume and agree to diligently carry out all of the obligations of the General Partners hereunder; (iii) have and agree to maintain and satisfy the net worth and other requirements for a corporate general partner so that the Partnership shall be classified as a partnership and not as an association for tax purposes under the Code, and rules, regulations and interpretations thereunder; and (iv) cause the Partnership to be furnished with the opinion of Counsel to the Partnership that such admission will not cause the taxable year of the Partnership or the status of the Partnership to terminate under the Code. Upon the Retirement of either or both of Messrs. Kargman and Ullian as General Partners, if proposed in connection with the admission to the Partnership of any such Qualified Substitute Corporate General Partner(s), such Retiring General Partner or Partners hereby guarantee to so maintain the net worth of such Qualified Substitute Corporate General Partner(s) by making up or causing to be made up any deficit in such net worth below the then applicable amount so required under the Code and such rules, regulations and interpretations thereunder, reduced from time to time by any amounts previously advanced by such Qualified Substitute Corporate General Partner(s) as Capital Contributions to the Partnership.

SECTION 5.9 Liability of Retiring General Partner. If the business of the Partnership is continued after the Retirement of a General Partner, the Retiring General Partner shall remain liable for all obligations and liabilities incurred by him while a General Partner and for which he was liable as a General Partner. The Retiring General Partner shall not incur any obligation or liability on account of the business of the Partnership or the activities of the remaining or Substitute General Partners, if any, after his Retirement.

SECTION 5.10 Retirement of a Special Limited Partner or an Original Limited Partner. The Retirement of either of the Special Limited Partners or any Original Limited Partner shall not have the effect of dissolving or terminating the Partnership. In the event of the Retirement of either of the Special Limited Partners or any Original Limited Partner, the legal representative of the Retired Special Limited Partner or Original Limited Partner, as the case may be, shall be the assignee of the Retired Partner's Partnership Interest and may become a Substitute Special Limited Partner or Substitute Original Limited Partner, respectively, upon compliance with the provisions of Section 5.5 hereof. The estate of the Retired Partner shall be liable for all of the Retired Partner's liabilities and obligations to the Partnership as a Special Limited Partner or Original Limited Partner, as the case may be.





## ARTICLE VI

### DISSOLUTION AND TERMINATION

#### SECTION 6.1. Events of Dissolution.

(a) The Partnership shall be dissolved:

(i) on a date designated by the General Partners;

(ii) upon the occurrence of an event specified under the laws of the Commonwealth of Massachusetts as one effecting dissolution;

(iii) upon the sale or taking by eminent domain in one transaction or a series of related transactions of all of the Partnership's right, title and interest in and to its assets or such a substantial portion thereof that the business of the Partnership cannot in the judgment of the Managing General Partners be reasonably and economically continued;

(iv) upon the Retirement of a General Partner unless a majority in interest of the remaining General Partners agree (or, in the case of a sole remaining General Partner, such General Partner elects) to continue the business of the Partnership, or if there are no remaining General Partners, all remaining limited partners elect to continue the business of the Partnership within sixty (60) days after such event of Retirement as to all General Partners or a sole General Partner; and

(v) in any event, at midnight on the 40th annual anniversary date of the commencement of the Partnership.

(b) Dissolution of the Partnership shall be effective on the date on which the event occurs giving rise to the dissolution, but the Partnership shall not be wound up until the assets of the Partnership shall have been distributed as provided herein. Notwithstanding the dissolution of the Partnership, prior to the winding up of the Partnership, as aforesaid, the business of the Partnership and the affairs of the Partners, as such, shall continue to be governed by this Agreement.

(c) If, following the dissolution of the Partnership and the distribution or liquidation of all or substantially all of its assets in accordance with Section 6.3, any Partner has a negative balance in his Capital Account after adjusting such Capital Account to reflect the allocations and distributions required under Article IV, the amount of such negative balance shall be deemed to be an asset of the Partnership, and shall be paid by such Partner to the Partnership within ten (10) days



after the delivery to such Partner of a certificate of the Accountants, prepared in good faith and at the expense of the Partnership, setting forth the calculation of such Partners' negative Capital Account balance. Any such amount shall be distributed to those Partners having positive Capital Account balances in proportion to, and to the extent necessary to eliminate, such positive balances or, to the extent required by law, shall be distributed to Partnership creditors. In no event shall any Partner have any personal liability under this Section 6.1(c) unless and to the extent (as of the date any payment would be required under this Section 6.1(c) but for the provisions of this sentence) the absence of such liability would cause the allocations of income, gain, loss, deductions or credit (or any item thereof) to the respective Partners to lack substantial economic effect within the meaning of Section 704(b) of the Code.

**SECTION 6.2. General Partner's Right to Purchase Partnership Business and Assets.** Upon dissolution of the Partnership, the General Partners shall have the right to purchase all, but not less than all, of the Partnership business and assets by paying to the Limited Partners the fair market value of their Partnership Interests as mutually determined by the Partners. If the Partners cannot agree upon such fair market value of the Partnership Interest of the Limited Partners, then the fair market value of the Partnership Interest shall be determined by appraisal in the manner described in Section 5.3 hereof. The General Partners shall advise the Partners within ninety (90) days following the dissolution of the Partnership of their election to purchase or not to purchase the partnership interests of the Limited Partners.

**SECTION 6.3. Liquidation.**

(a) Upon dissolution of the Partnership, and in the event an election is not made pursuant to Section 6.2, the General Partners or (in the absence of the General Partners) a liquidator appointed by the Partners shall liquidate the assets of the Partnership, apply and distribute the proceeds thereof as hereinafter provided in this Section 6.3. As part of such liquidation, the unpaid portion of the Capital Contribution of any Partner being a debt due the Partnership, shall be collected by the General Partners or (in the absence of the General Partners) by the liquidator, on behalf of the Partnership.

(b) The net proceeds of liquidation of the Partnership (after the applications described in clauses First, Second and Third of Section 4.3) shall be applied and distributed to the Partners in accordance with the positive balances in their Capital Accounts after taking into account all Capital Account



Said records shall include:

- (1) a current list of the full name and last known business address of each Partner set forth in alphabetical order;
- (2) a copy of the Certificate of Limited Partnership and all certificates of amendment thereto together with executed copies of any powers of attorney pursuant to which any certificate has been executed;
- (3) copies of the Partnership's federal, state and local income tax returns and reports, if any, for the three (3) most recent years;
- (4) a copy of this Agreement and any amendments hereto; and
- (5) any financial statements of the Partnership for the three (3) most recent years.

(b) Said books, records and accounts shall be kept at the principal office of the Partnership. All Partners and their duly authorized representatives shall have the right to audit, examine and make copies of the same during business hours.

(c) Said books shall be kept on an accrual basis.

**SECTION 7.2 Fiscal Year.** The fiscal year of the Partnership shall be the calendar year. Another year may be designated for financial reporting purposes by the General Partner with the consent of the Special Limited Partners and a majority in interest of the Original Limited Partners.

**SECTION 7.3. Bank Accounts.** The funds of the Partnership shall be deposited in the name of the Partnership. Each Partner may at any time examine the Partnership's bank balances, statements, and accounts.

**SECTION 7.4. Tax Returns.** The General Partners will cause to be prepared or reviewed by an accounting firm designated by the Managing General Partners, at the Partnership's expense, appropriate federal, state and local tax returns which shall be submitted to the Partners not more than sixty (60) days after the close of each fiscal year.



## ARTICLE VIII

### AMENDMENTS

SECTION 8.1. Amendment to Certificate. The Certificate of Limited Partnership for the Partnership shall be amended by filing a Certificate of Amendment with the Secretary of State whenever:

- (a) there is a change in the amount or character of the contribution of any Partner, or in any Partner's obligation to make a capital contribution;
- (b) a new Partner is admitted;
- (c) a Partner withdraws;
- (d) the business of the Partnership is continued after the withdrawal of a General Partner;
- (e) the General Partners become aware that any statement in the Certificate of Limited Partnership was false when made or that any arrangements or other facts have changed, making the Certificate inaccurate in any respect; provided that amendments reflecting change of address of a Limited Partner need be filed only once in 12 months; or
- (f) the Managing General Partners, in their discretion, so determine.

SECTION 8.2. Amendment to Agreement. This Agreement may be amended in accordance with Section 3.1(b) and (c) by the General Partner and upon amendment of this Agreement, the Certificate of Limited Partnership shall also be amended if necessary to reflect the change, and each Partner hereby appoints each General Partner as his attorney-in-fact to so execute and file with the Secretary of State of the Commonwealth of Massachusetts any such amendment hereto and to the Certificate of Limited Partnership.

## ARTICLE IX

### MISCELLANEOUS

SECTION 9.1. Notices. Any and all notices, elections or demands permitted or required to be made under this Agreement shall be in writing, signed by the Partner giving such notice, election or demand and shall be delivered personally, or sent by registered or certified mail, to the other Partners, at their addresses set forth in Schedule A of the Partnership, or at such other address as may be supplied by written notice





given in conformity with the terms of this Section 7.1. The date of personal delivery or the date of mailing, as the case may be, shall be the date of such notice. Any notice may be waived in writing by the person entitled to receive it.

Any and all consents of the Partners, or any class of Partners, required under this Agreement shall be deemed given unless written notice of nonconsent shall have been received by the Managing General Partners at the offices of the Partnership within thirty (30) days after notice of the action requiring such consent has been mailed.

**SECTION 9.2. Certificates.** The General Partners shall not be obligated to deliver copies of the certificate of limited partnership or any other certificate to the Limited Partners unless so requested in writing.

**SECTION 9.3. Successors and Assigns.** Subject to the restrictions on transfers set forth herein, this Agreement, and each and every provisions hereof, shall be binding upon and shall inure the benefit of the Partners, their respective stockholders, successors, successor-in-title, heirs, administrators and permitted assigns; and each and every successor-in-interest to any Partner, whether such successor acquires such interest by way of gift, purchase, foreclosure, or by any other method, shall hold such interest subject to all of the terms and provisions of this Agreement.

**SECTION 9.4. Power of Attorney.** The undersigned Limited Partners and any additional or substituted Partner(s) admitted hereafter, by the execution of this Agreement or any counterpart hereof, do hereby irrevocably constitute and appoint the General Partners their true and lawful agent and attorney-in-fact, with full power and authority in their name, place and stead, to make, execute, acknowledge, swear to, deliver, file and record such documents as may be necessary or appropriate to carry out the provisions of this Agreement and any amendments to this Agreement. The foregoing power of attorney, being coupled with an interest, is hereby declared to be irrevocable, and shall survive the death, dissolution or incapacity of any Partner.

**SECTION 9.5. Partition.** The Partners hereby agree that (i) no Partner, nor any successor-in-interest to any Partner, shall have the right while this Agreement remains in effect to have the property of the Partnership partitioned, (ii) that no Partner shall file a complaint or institute any proceeding at law or in equity to have the property of the Partnership partitioned, and (iii) each Partner, on behalf of himself, his successors, representatives, heirs, and assigns, hereby waives any such right. It is the intention of the Partners that during the term of this Agreement, the rights of the Partners



and their successors-in-interest, as among themselves, shall be governed by the terms of this Agreement, and that the right of any Partner or successor-in-interest to assign, transfer, sell or otherwise dispose of his interest in the Partnership or in any interest in such Partner shall be subject to the limitations and restrictions of this Agreement.

SECTION 9.6. No Waiver. The failure of any Partner to insist upon strict performance of a covenant hereunder or of any obligations hereunder, irrespective of the length of time for which such failure continues, shall not be a waiver of such Partner's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation hereunder, shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation hereunder.

SECTION 9.7. Captions. Titles or captions of Articles or Sections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

SECTION 9.8. Construction of Agreement. If any portion of this Agreement shall be held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be considered valid and operative and effect shall be given (to the extent that it may lawfully be given) to the intent manifested by the portion held invalid or inoperative. To the extent that any provision of any agreement among any of the parties hereto, entered into prior to the date hereof, conflicts with any provision of this Agreement, the provision contained in this Agreement shall prevail.

SECTION 9.9. Counterparts. This Agreement may be signed in several counterparts, each of which shall be deemed an original and all of which shall together constitute but one and the same Agreement.

SECTION 9.10. Applicable Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by and interpreted, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

SECTION 9.11. Further and Additional Documents. Each of the parties hereto agrees to execute, acknowledge and verify, if required to do so, any and all further or additional documents as may be necessary to fully effectuate the terms of this Agreement.



SECTION 9.12. Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any of the creditors of the Partnership.

SECTION 9.13. Definitions. The defined terms used in this Agreement shall have the meanings specified below:

"Affiliate" shall have the meaning given in Section 3.2.

"Affiliated Corporate General Partner" means any corporation in which Messrs. Kargman and/or Ullian own at least a majority in interest.

"Agreement" means this Certificate and Agreement of Limited Partnership, as the same may be amended from time to time.

"Cash Flow available for distribution" shall have the meaning given in Section 4.2.

"Class B Special Limited Partner" shall have the meaning given in Section 5.7.

"General Partner" means any person or persons designated as a General Partner in Schedule A hereto, whether there be one or several, and any person who becomes a Substitute General Partner as provided herein, in such person's capacity as a General Partner of the Partnership.

"General Partner Loans" means any funds loaned or caused to be loaned to the Partnership by the General Partner in accordance with the terms set forth in Section 2.3.

"General Partnership Interest" means the interest in the Partnership held by each General Partner in his capacity as General Partner, as indicated on Schedule A, as the same may be amended.

"Limited Partner" means any person designated in Schedule A as a Special Limited Partner or Original Limited Partner or any person admitted to the Partnership as a Substitute Special Limited Partner or Substitute Original Limited Partner in such person's capacity as a Special Limited Partner or Original Limited Partner, as the case may be, of the Partnership.

"Limited Partnership Interest" means the interest in the Partnership held by each Limited Partner, in his capacity as a Limited Partner, as indicated on Schedule A, as the same may be amended.

"Managing General Partners" means Robert M. Kargman, Arthur D. Ullian and Lawrence R. Smith in accordance with the terms set forth in Section 3.5.



Act; the Massachusetts Rental Assistance Program under M.G.L. Ch. 121B, Sec. 42.44A; and the rules and regulations promulgated under each of the foregoing, as each of the foregoing may be made, published or amended from time to time, but only to the extent applicable to the Partnership, the Operating Partnership or the Phase One Project, as the case may be.

"Retirement" means in the case of any Partner, the death, incapacity, or bankruptcy of such Partner or his or its withdrawal from the Partnership. "Incapacity" shall mean an adjudication of insanity or incompetency. "Bankruptcy" shall be deemed to occur when such Partner (or any Partner of such Partner) is adjudicated a bankrupt, or if a petition or an answer is filed proposing the adjudication of such Partner (or Partner of such Partner) as bankrupt, when such Partner (or Partner of such Partner) shall consent to filing thereof. A Partner's withdrawal from the Partnership shall be deemed to occur on the date of withdrawal stated in a notice given by him to the other Partners, which date of withdrawal shall be at least thirty (30) days after such notice is given.

"Special Limited Partner" means any person or persons designated as a Special Limited Partner in Schedule A hereto, whether there be one or several, and any person who becomes a Substitute Special Limited Partner as provided herein, in such person's capacity as a Special Limited Partner of the Partnership.

"Special Limited Partnership Interest" means the interest in the Partnership held by each Special Limited Partner in its capacity as Special Limited Partner, as indicated on Schedule A, as the same may be amended.

"Substitute General Partner" means the assignee of a General Partnership Interest who is admitted to the Partnership pursuant to this Agreement.

"Substitute Limited Partner" means the assignee of a Limited Partnership Interest who is admitted to the Partnership pursuant to this Agreement.

"Substitute Original Limited Partner" means the assignee of an Original Limited Partnership Interest who is admitted to the Partnership pursuant to this Agreement.

"Substitute Partner" means the assignee of a Partnership Interest who is admitted to the Partnership pursuant to this Agreement.

"Substitute Special Limited Partner" means the assignee of a Special Limited Partnership Interest who is admitted to the Partnership pursuant to this Agreement.





IN WITNESS WHEREOF, the Partners have executed and delivered this Agreement to take effect as a sealed instrument as of the date first written above.

GENERAL PARTNERS:

Robert M Kargman  
Robert M Kargman

Arthur D. Ullian  
Arthur D. Ullian

Lawrence R. Smith  
Lawrence R. Smith

Richard L. Taylor  
Richard L. Taylor

ORIGINAL LIMITED PARTNERS:

Kenneth Bornstein  
Kenneth Bornstein

Eliot J. Frost  
Eliot J. Frost

RLT NOMINEE TRUST

Richard L. Taylor, Trustee  
and not individually

WHIPPLE NOMINEE TRUST

Robert M. Kargman  
Robert M. Kargman, Trustee  
and not individually

SPECIAL LIMITED PARTNERS:

CONCORD BAPTIST CHURCH

By: Conley H. Hughes, Jr.  
Conley H. Hughes, Jr., Pastor

CONCORD BAPTIST CHURCH  
HOUSING AND ECONOMIC  
DEVELOPMENT CORP.

By: Conley H. Hughes, Jr.  
Conley H. Hughes, Jr., President



IN WITNESS WHEREOF, the Partners have executed and delivered this Agreement to take effect as a sealed instrument as of the date first written above.

GENERAL PARTNERS:

\_\_\_\_\_  
Robert M Kargman

\_\_\_\_\_  
Arthur D. Ullian

\_\_\_\_\_  
*Lawrence R. Smith*  
Lawrence R. Smith

\_\_\_\_\_  
Richard L. Taylor

ORIGINAL LIMITED PARTNERS:

\_\_\_\_\_  
Kenneth Bornstein

\_\_\_\_\_  
*Eliot J. Frost*  
Eliot J. Frost

RLT NOMINEE TRUST

\_\_\_\_\_  
Richard L. Taylor, Trustee  
and not individually

WHIPPLE NOMINEE TRUST

\_\_\_\_\_  
Robert M. Kargman, Trustee  
and not individually

SPECIAL LIMITED PARTNERS:

CONCORD BAPTIST CHURCH

By: \_\_\_\_\_

CONCORD BAPTIST CHURCH  
HOUSING AND ECONOMIC  
DEVELOPMENT CORP.

By: \_\_\_\_\_



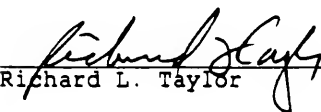
IN WITNESS WHEREOF, the Partners have executed and delivered this Agreement to take effect as a sealed instrument as of the date first written above.

GENERAL PARTNERS:

\_\_\_\_\_  
Robert M Kargman

\_\_\_\_\_  
Arthur D. Ullian

\_\_\_\_\_  
Lawrence R. Smith


  
\_\_\_\_\_  
Richard L. Taylor

ORIGINAL LIMITED PARTNERS:

\_\_\_\_\_  
Kenneth Bornstein

\_\_\_\_\_  
Eliot J. Frost

RLT NOMINEE TRUST

  
\_\_\_\_\_  
Richard L. Taylor, Trustee  
and not individually

WHIPPLE NOMINEE TRUST

\_\_\_\_\_  
Robert M. Kargman, Trustee  
and not individually

SPECIAL LIMITED PARTNERS:

CONCORD BAPTIST CHURCH

By: \_\_\_\_\_

CONCORD BAPTIST CHURCH  
HOUSING AND ECONOMIC  
DEVELOPMENT CORP.

By: \_\_\_\_\_



IN WITNESS WHEREOF, the Partners have executed and delivered this Agreement to take effect as a sealed instrument as of the date first written above.

GENERAL PARTNERS:

\_\_\_\_\_  
Robert M Kargman

\_\_\_\_\_  
Arthur D. Ullian

\_\_\_\_\_  
Lawrence R. Smith

\_\_\_\_\_  
Richard L. Taylor

ORIGINAL LIMITED PARTNERS:

  
Kenneth Bornstein

\_\_\_\_\_  
Eliot J. Frost

RLT NOMINEE TRUST

\_\_\_\_\_  
Richard L. Taylor, Trustee  
and not individually

WHIPPLE NOMINEE TRUST

\_\_\_\_\_  
Robert M. Kargman, Trustee  
and not individually

SPECIAL LIMITED PARTNERS:

CONCORD BAPTIST CHURCH

By: \_\_\_\_\_

CONCORD BAPTIST CHURCH  
HOUSING AND ECONOMIC  
DEVELOPMENT CORP.

By: \_\_\_\_\_





EXHIBIT 1

Legal Description of the Phase One Parcel

A certain parcel of land situated in the city of Boston, County of Suffolk, and Commonwealth of Massachusetts, being more particularly bounded and described as follows:

Beginning at the intersection of the southeasterly line of Columbus Avenue and the southwesterly line of Camden Street;

THENCE running S 47° 56' 00" E, along said southwesterly line of Camden Street, a distance of 391.17 feet, to the northwesterly line of Tremont Street;

THENCE running S 53° 54' 20" W, along said northwesterly line of Tremont Street, a distance of 199.78 feet, to a point on the northerly line of an existing Metropolitan District Commission Sewer Easement;

THENCE running northwesterly along said northerly line of said easement, on a curve to the right having a radius of 190.00 feet, an arc distance of 180.77, to a point of curvature;

THENCE running N 48° 55' 50" W, through land of Boston Redevelopment Authority, a distance of 197.83 feet, to a point on the aforesaid southeasterly line of Columbus Avenue;

THENCE running N 42° 15' 07" E, along said southeasterly line of Columbus Avenue, a distance of 281.35 feet, to the point of beginning.

The above parcel contains 97,955 square feet, more or less.



SCHEDULE A cont'd

DOUGLASS PLAZA ASSOCIATES PHASE ONE LIMITED PARTNERSHIP

	<u>Column I</u>	<u>Column II</u>	<u>Column III</u>
<u>Partner's Name and Business Address</u>	<u>Share of Cash Distributions (%)</u>	<u>Share of Profits, Losses and Credits (%)</u>	<u>Capital Contribution</u>
<u>Original Limited Partners</u> (continued)			
Richard L. Taylor, Trustee RLT Nominee Trust One Boston Place Suite 3400 Boston, MA 02108	2.100%	2.50%	\$3.00
Robert M. Kargman, Trustee Whipple Nominee Trust 151 Tremont St. Boston, MA 02111	3.074%	3.66%	\$4.00
TOTALS	100.000%	100.00%	\$121.00

24340



First Amended and Restated Certificate and  
Agreement of Limited Partnership of  
Douglass Plaza Housing Company I Limited Partnership



FILED  
APR - 4 1989  
SECRETARY OF STATE  
CORPORATION DIVISION

FIRST AMENDED AND RESTATED CERTIFICATE AND AGREEMENT  
OF LIMITED PARTNERSHIP OF  
DOUGLASS PLAZA HOUSING COMPANY I LIMITED PARTNERSHIP

RECITALS

THIS FIRST AMENDED AND RESTATED CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP OF DOUGLASS PLAZA HOUSING COMPANY I LIMITED PARTNERSHIP (the "Agreement") is made and entered into as of March 28, 1989, by and among the undersigned parties.

WHEREAS, Douglass Plaza Housing Company I Limited Partnership (the "Partnership") was formed as a limited partnership under the Uniform Limited Partnership Act as adopted by the Commonwealth of Massachusetts, pursuant to that certain original certificate and agreement dated October 30, 1987, which was filed with the Secretary of State of the Commonwealth of Massachusetts on November 2, 1987, having Douglass Plaza Associates Phase One Limited Partnership, a Massachusetts limited partnership, as the general partner, and Concord Baptist Church and Concord Baptist Church Housing and Economic Development Corp., as special limited partners; and

WHEREAS, pursuant to that certain Amendment to Certificate and Agreement of Limited Partnership Agreement of the Partnership, dated as of March 3, 1989 and filed with the Secretary of State of the Commonwealth of Massachusetts on March 28, 1989, Concord Baptist Church and Concord Baptist Church Housing and Economic Development Corp. have each withdrawn as special limited partners of the Partnership, and Robert M. Kargman has been admitted as the sole limited partner of the Partnership; and

WHEREAS, the Partners of the Partnership desire to amend the original certificate and agreement (i) to admit the Federal National Mortgage Association, a corporation organized and existing under the laws of the United States, as the sole limited partner; (ii) to effectuate the withdrawal of Robert M. Kargman as a limited partner; and (iii) amend and restate entirely the agreement among the Partners;

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby agree as follows:





## ARTICLE I

### Definitions

1. The following defined terms used in this Agreement shall have the meanings specified below:

(a) "Accountants" means Laventhol & Horwath or such other recognized firm of independent certified public accountants as may be engaged by the General Partner. The term "Reviewing Accountants" for purposes hereof, shall mean Reznick, Fedder & Silverman, or such other recognized firm of independent certified public accountants as may be designated by the Limited Partner.

(b) "Act" means the Uniform Limited Partnership Act as adopted by the Commonwealth of Massachusetts, Chapter 109 of the Massachusetts General Laws, or any corresponding provision or provisions of succeeding law, as it or they may be amended from time to time.

(c) "Additional Installment(s)" means the second and each subsequent Installment of the Limited Partner's agreed-to Capital Contribution to the Partnership, the due date of which is, in each case, subsequent to the Admission Date.

(d) "Additional Installment Due Date" means the later of (i) the due date of such Additional Installment in accordance with the schedule of payments listed on Exhibit A hereof, or (ii) fifteen days after receipt by the Limited Partner of the Additional Installment Payment Notice.

(e) "Additional Installment Payment Notice" has the meaning set forth in Article III(2)(c).

(f) "Adjusted Capital Account Deficit" means, with respect to any Partner, the deficit balance, if any, in such Partner's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Partner is obligated to restore pursuant to any provision of this Agreement, is otherwise treated as being obligated to restore under Treasury Regulation Section 1.704-1(b)(2)(ii)(c), or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulation Sections 1.704-1T(b)(4)(iv)(f) and 1.704-1T(b)(4)(iv)(h)(5) (determined after taking into account any changes during such year in the Partnership Minimum Gain); and

(ii) Debit to such Capital Account the items described in Treasury Regulation Section



1.704-1(b)(2)(ii)(d)(4), (5), and (6). The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provision of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(g) "Admission Date" means the date on which Fannie Mae is admitted to the Partnership as a Limited Partner, which shall be deemed to be the date on which the latest of the following shall occur: (i) the payment by Fannie Mae of its Capital Contribution due on the Admission Date in accordance with the schedule of payments listed on Exhibit A hereof; or (ii) the filing of this Agreement for record with the Massachusetts Secretary.

(h) "Affiliate" means, as to any Partner, (i) any such Partner or member of his Immediate Family; (ii) if such Partner is a partnership, any partner of such partnership; (iii) the legal representative, successor or assignee of, or any trustee of a trust for the benefit of, any such Partner or member of his Immediate Family; (iv) any entity of which a majority of the voting interests is owned by any one or more of the Persons referred to in the preceding clauses (i) and (iii); (v) any officer, director, trustee, employee, stockholder (10% or more) or partner of any Person referred to in the preceding clauses (i), (iii) and (iv); and (vi) any Person directly or indirectly controlling (10% or more), or under direct or indirect common control with, any Person referred to in the preceding clauses (i), (ii), (iii), (iv) or (v).

(i) "Agreement" means this First Amended and Restated Certificate and Agreement of Limited Partnership of Douglass Plaza Housing Company I Limited Partnership, including Exhibits A - G attached hereto and made a part hereof, as amended and in effect from time to time.

(j) "Appraised Value" has the meaning set forth in Article IX(7).

(k) "Architect" means ADD, Inc., 80 Prospect Street, Cambridge, Massachusetts 02139.

(l) "BRA" means the Boston Redevelopment Authority, a public body politic and corporate organized and existing under Chapter 121B of the Massachusetts General Laws.

(m) "BRA Condominium Loan" means, for purposes of this Agreement, that portion of the BRA Loan determined at the time of Completion of the Project to be allocable to the acquisition of the land devoted to the Condominium Project; it is anticipated that the BRA Condominium Loan will be in the original principal amount of \$148,500.



(n) "BRA Condominium Mortgage" means, for purposes of this Agreement, the Mortgage and Security Agreement to be entered into upon Completion of the Project by the Partnership, as mortgagor, and the BRA, as mortgagee, conveying to the City a junior mortgage interest in the Partnership Property included as part of the Condominium Project, and if said mortgage is replaced or supplemented by subsequent financing and mortgages in accordance with this Agreement, such term shall refer to any such subsequent financing, mortgage, or mortgages.

(o) "BRA Condominium Note" means, for purposes of this Agreement, the promissory note to be delivered upon Completion of the Project by the Partnership to the BRA representing the Partnership's obligation to repay the principal amount, and all accrued interest, in respect of the BRA Condominium Loan, as said promissory note may be amended, supplemented or replaced in accordance with the terms hereof.

(p) "BRA Loan" means the mortgage loan in the original principal amount of \$658,800 made by the BRA to the Partnership for the purpose of funding a portion of the purchase price paid to the BRA for the Land; for purposes of this Agreement, the term BRA Loan refers collectively to the BRA Condominium Loan and the BRA Rental Loan.

(q) "BRA Loan Documents" means the instruments, agreements and documents executed and delivered in connection with the BRA Loan, including without limitation the BRA Note and the BRA Mortgage; the deed of the Land from the BRA to the Partnership dated October 30, 1987; and the Land Disposition Agreement with respect to the Land, dated October 30, 1987, by and between the Partnership and the BRA, as the same may be amended, and any supplemental or replacement loan documentation executed and delivered in connection with the bifurcation of the BRA Loan into the BRA Condominium Loan and the BRA Rental Loan upon Completion of the Project.

(r) "BRA Mortgage" refers, for purposes of this Agreement, to the Mortgage and Security Agreement, dated as of October 30, 1987, by and between the Partnership, as mortgagor, and the BRA, as mortgagee, and any additional or substitute mortgage or mortgages granted by the Partnership to the BRA, conveying a junior mortgage interest in the Condominium Project and the Rental Project as security for the obligations of the Partnership in respect of the BRA Loan.

(s) "BRA Note" refers, for purposes of this Agreement, to the promissory note in the original principal amount of \$658,800, dated October 30, 1987, delivered by the Partnership to the BRA, and any additional or substitute promissory notes delivered by the Partnership to the BRA, evidencing the Partnership's obligations to repay the principal amount, and all accrued interest, in respect of the BRA Loan.



(t) "BRA Rental Loan" means, for purposes of this Agreement, that portion of the BRA Loan determined at the time of Completion of the Project to be allocable to the acquisition of the land devoted to the Rental Project; it is anticipated that the BRA Rental Loan will be in the original principal amount of \$510,300.

(u) "BRA Rental Mortgage" means, for purposes of this Agreement, the Mortgage and Security Agreement to be entered into upon Completion of the Project by the Partnership, as mortgagor, and the BRA, as mortgagee, conveying to the BRA a junior mortgage interest in the Partnership Property included as part of the Rental Project, and if said mortgage is replaced or supplemented by subsequent financing and mortgages in accordance with this Agreement, such term shall refer to any such subsequent financing, mortgage, or mortgages.

(v) "BRA Rental Note" means, for purposes of this Agreement, the promissory note to be delivered upon Completion of the Project by the Partnership to the BRA representing the Partnership's obligation to repay the principal amount, and all accrued interest, in respect of the BRA Rental Loan, as said promissory note may be amended, supplemented or replaced in accordance with the terms hereof.

(w) "Capital Account" has the meaning set forth in Article VII(1) of this Agreement.

(x) "Capital Contribution" means the total amount of cash or any cash equivalents contributed or agreed to be contributed to the Partnership by each Partner, including all adjustments thereto, as provided in this Agreement and Exhibit A. Any reference in this Agreement to the Capital Contribution of a substituted Partner shall include all Capital Contributions previously made by any predecessor or former Partner in respect of the Interest acquired by the substituted Partner, subject to all adjustments thereto pursuant to this Agreement.

(y) "Certificate" means the original certificate of limited partnership of the Partnership filed on November 2, 1987 with the Massachusetts Secretary pursuant to the Act, as the same may be amended from time to time.

(z) "City" means the City of Boston, Massachusetts.

(aa) "Code" means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of succeeding law.

(bb) "Completion" means the substantial completion of construction of the Project (excluding the Townhouses for purposes of each of the following clauses) as evidenced by the latest to occur of (i) the issuance of certificates of





occupancy (whether temporary or permanent) for all of the Units by the appropriate inspectional authorities, (ii) the issuance of a certificate prepared and executed by the Architect indicating that construction of the Partnership Property has been completed in accordance with the plans and specifications, except for punch list items which are not material and do not affect the rental of the Rental Units on a full rent paying basis, (iii) the approval of the Units for occupancy by MHFA, (iv) and the approval of the Units for occupancy by the BRA, if required under the BRA or HoDAG Loan Documents.

(cc) "Compliance Period" means the period specified in Section 42(i)(1) of the Code, as applicable to the Project.

(dd) "Condominium Contributions" means contributions of the General Partner to the Partnership made in accordance with Article V(15)(c).

(ee) "Condominium Losses" means the sum of the net losses of the Partnership for each Fiscal Year arising from the construction, interim operation, leasing (only as to the parking spaces included as part of the Condominium Project), sale or disposition of the Condominium Units and all or any portion of the Condominium Project as determined for federal income tax purposes, and each item of income, gain, profit, loss or deduction entering into the computation thereof.

(ff) "Condominium Proceeds" has the meaning set forth in Article VIII(1)(a).

(gg) "Condominium Profits" means the sum of the net profits of the Partnership for each Fiscal Year arising from the construction, interim operation, leasing (only as to the parking spaces included as part of the Condominium Project), sale or disposition of the Condominium Units and all or any portion of the Condominium Project as determined for federal income tax purposes, and each item of income, gain, profit, loss or deduction entering into the computation thereof.

(hh) "Condominium Project" means for purposes of this Agreement that portion of the Project which will consist of (i) a four-story building facing Tremont Street and a new street to be constructed above the Parking Garage Facility containing 33 separate residential dwelling units, to be referenced in the Master Deed of the Project as the "Condominium Flats Unit;" and (ii) nine three-story residential townhouse structures to be constructed facing Camden Street with private parking spaces and assigned open space for each such structure; and (iii) 33 of the parking spaces, held for sale, license and/or lease, included in the Parking Garage Facility. The drawing attached as part of Exhibit B hereto delineates, in a general manner, those buildings (or areas within buildings) which are included as part of the Condominium Project.



(ii) "Condominium Units" refers to the 33 separate residential dwelling units located in a four story building included as part of the Condominium Project and the Townhouses; such dwelling units, upon Completion, will be submitted to a condominium regime.

(jj) "Construction Contract" means the Construction Contract, dated October 30, 1987, between the Partnership and Barkan Construction Company, Inc.

(kk) "Construction Monitoring Fee" means the construction monitoring fee payable to USTMB pursuant to the terms of the Financial Consulting Agreement.

(ll) "Contractor" means Barkan Construction Company, Inc., 1330 Boylston Street, Chestnut Hill, Massachusetts 02167.

(mm) "Cost Certification Date" means the date on which MHFA completes its review of the costs submitted by the Partnership for the purpose of determining the final cost of constructing the Project; such date is estimated to occur within six months following Completion of the Project.

(nn) "Counsel to the Partnership" means Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., or a successor law firm appointed by the General Partner.

(oo) "Credit(s)" means the Low-Income Housing Tax Credit(s) provided for under Section 42 of the Code.

(pp) "Credit Adjuster Advance" means an advance to the Partnership pursuant to Article III(3) by the General Partner, which shall not constitute an increase in its Net Invested Capital or affect its Interest or Partnership Percentage.

(qq) "Designated Low-Income Rental Unit(s)" means those Units included as part of the Rental Project designated by the General Partner from time to time for occupancy by qualifying low-income tenants.

(rr) "Designated Proceeds" has the meaning set forth in Article V(14)(d).

(ss) "Developer" refers to BIDC/Douglass Plaza Limited Partnership, a Massachusetts limited partnership engaged by the Partnership to perform certain development services in connection with the Project pursuant to the terms of the Development Agreement.

(tt) "Development Advance" has the meaning set forth in Article V(14)(b).



(uu) "Development Agreement" means the Development Agreement dated as of March 1, 1989, pursuant to which the development of the Project is being undertaken by the Developer.

(vv) "Development Fee" means the fee payable to the Developer pursuant to the Development Agreement.

(ww) "Development Fund Agreement" means that certain Development Fund Agreement, dated October 30, 1987, between the Partnership and MHFA executed and delivered in connection with the MHFA Loan, as the same may be amended.

(xx) "Environmental Report" means the environmental report(s) as to the Land, described in Article V(10)(s) hereof consisting of (i) the environmental site assessment report, dated as of August 4, 1986, prepared by Geotechnical Consultants of Massachusetts, Inc., (ii) that certain letter of Cyn Oil Corp. to Boston Investment and Development Company, dated May 25, 1988, and (iii) that certain report of Goldberg/Zoino and Associates, Inc., dated March 8, 1989.

(yy) "EOCD" means the Executive Office of Communities and Development of the Commonwealth of Massachusetts.

(zz) "Event of Bankruptcy" means with respect to any Person,

(i) the entry of a decree or order for relief by a court having jurisdiction in respect of such Person in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) for such Person or for any substantial part of his property, or ordering the winding-up or liquidation of his affairs, and the continuance of any such decree or order unstayed and in effect for a period of sixty consecutive days; or

(ii) the commencement by such Person of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar law, or the consent by such Person to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for such Person or for any substantial part of his or its property, or the making by such Person of any assignment for the benefit of creditors; or



(iii) the commencement against such Person of an involuntary case under the Federal Bankruptcy Act which has not been vacated, discharged or bonded within sixty consecutive days; or

(iv) the admission by such Person of his or its inability to pay his or its debts as they become due; or

(v) such Person becoming "insolvent" by the taking of any action or the making of any transfer or otherwise, as insolvency is or may be defined pursuant to the Federal Bankruptcy Act, the Uniform Fraudulent Conveyances Act, any state or federal act or law, or the ruling of any court.

(aaa) "Fair Market Value" has the meaning set forth in Article IX(7).

(bbb) "Fannie Mae" means the Federal National Mortgage Association, a corporation organized and existing under the laws of the United States, which shall serve as the Limited Partner of the Partnership.

(ccc) "Final Determination" means, with respect to any issue, the earliest to occur of: (i) a decision, judgment, decree, or other order being issued by any court of competent jurisdiction, which decision, judgment, decree, or other order has become final (i.e., all allowable appeals requested by the parties to the action have been exhausted), (ii) the Service having entered into a binding agreement with the Partnership or having reached a final administrative or judicial determination which, whether by law or agreement, is not subject to appeal, or (iii) the expiration of the applicable statute of limitation.

(ddd) "Financial Consulting Agreement" means that certain Financial Consulting Agreement, dated as of December 1, 1988, by and between the Partnership and USTMB pursuant to which USTMB has been engaged by the Partnership to provide certain financial consulting and construction monitoring services in connection with the development of the Rental Project.

(eee) "Financial Consulting Fee" means the financial consulting fee to be paid by the Partnership to USTMB pursuant to the terms of the Financial Consulting Agreement.

(fff) "Fiscal Year" means the fiscal year of the Partnership which shall be the calendar year.

(ggg) "Gain allocable to the Rental Project" means the income and gain of the Partnership for federal income tax purposes arising from a sale or other disposition of all or any portion of the Rental Project or the Rental Units.





(hhh) "General Partner" means Douglass Plaza Associates Phase One Limited Partnership and any additional or substitute general partners of the Partnership named in any duly adopted amendment to this Agreement.

(iii) "HoDAG Grant" means the Housing Development Action Grant furnished by HUD to the City.

(jjj) "HoDAG Letter of Credit" means the letter of credit issued to MHFA by the Partnership to assure operating funds for the Rental Project pending receipt of HoDAG Loan proceeds, including any extensions thereof or substitutions therefor.

(kkk) "HoDAG Loan" shall mean the mortgage loan in the anticipated principal amount of \$3,430,750 to be made by the City to the Partnership from the proceeds of the HoDAG Grant to fund a portion of the cost of constructing the Rental Project.

(lll) "HoDAG Loan Documents" refers to all documents and agreements between the Partnership and/or the City and/or the BRA and/or HUD concerning the HoDAG Loan, including without limitation the HoDAG Note and HoDAG Mortgage, the HoDAG Grant Agreement entered into between the City and HUD, and the HoDAG Owner/Grantee Agreement (on terms consistent with those set forth in Exhibit D to the HoDAG Grant Agreement) to be entered into between the City and the Partnership, and any amendments that may be made from time to time to any of the foregoing.

(mmm) "HoDAG Mortgage" refers to the mortgage and security Agreement granted by the Partnership to the BRA conveying a junior mortgage interest in the Project, until Completion, and thereafter, in solely the Rental Project, as security for the obligations of the Partnership in respect of the HoDAG Loan; if said mortgage is replaced or supplemented by subsequent financing and mortgages in accordance with this Agreement, such term shall refer to any such subsequent financing, mortgage, or mortgages.

(nnn) "HoDAG Note" refers, for purposes of this Agreement, to the promissory note delivered by the Partnership to the City evidencing the Partnership's obligations to repay the principal amount, and all accrued interest, in respect of the HoDAG Loan, as said promissory note may be amended, supplemented or replaced in accordance with the terms hereof.

(ooo) "HUD" means the United States Department of Housing and Urban Development.



(ppp) "Incentive Management Agreement" means that certain Incentive Management Agreement, dated as of March 28, 1989, by and between the Partnership and the Management Agent.

(qqq) "Incentive Management Fee" means the fee payable to the Management Agent pursuant to the terms of the Incentive Management Fee Agreement.

(rrr) "Immediate Family" means, with respect to any Person, his or her spouse, children, including adopted children, step-children, parents, parents-in-law, nephews, nieces, brothers, sisters, brothers-in-law, and sisters-in-law, each whether by birth, marriage, or adoption, as well as any inter vivos trusts created for the benefit of such Person or any of the foregoing.

(sss) "Installment(s)" means each of the installment payments of the Limited Partner's Capital Contribution to the Partnership payable in accordance with Article III(2)(b).

(ttt) "Interest", as to any Partner, means such Partner's right, title, and interest in and to any and all assets, distributions, losses, profits and shares of the Partnership, whether cash or otherwise, and any other interests and economic incidents of ownership whatsoever of such Partner in the Partnership.

(uuu) "Investor Service Agent" means Boston Investment and Financial Services Corp., a Massachusetts corporation.

(vvv) "Investor Services Agreement" means that certain Investor Services Agreement, dated as of March 28, 1989, by and between the Partnership and the Investor Service Agent.

(www) "Investor Service Fee" means the annual fee payable to the Investor Service Agent pursuant to the terms of the Investor Services Agreement.

(xxx) "Land" shall have the meaning given in Article II(6)(a).

(yyy) "Letter(s) of Credit" means certain letters of credit furnished, or to be furnished, by the Partnership to MHFA in accordance with the MHFA Loan Documents and to Pianocraft Guild Associates, including any replacements thereof or substitutions therefor. The letters of credit presently furnished, and those expected to be furnished, by the Partnership are described in Exhibit F hereto.



(zzz) "LIH Credit Sum" has the meaning set forth in Article III(3)(a).

(aaaa) "LIH Gross-Up Amount" has the meaning set forth in Article III(3)(d).

(bbbb) "LIH Recapture Amount" has the meaning set forth in Article III(3)(a).

(cccc) "LIH Reduction Amount" has the meaning set forth in Article III(3)(a).

(dddd) "Limited Partner" or "Limited Partners" means Fannie Mae and/or any Person or Persons who become(s) an additional or Substitute Limited Partner as provided herein, in each such person's capacity as a Limited Partner.

(eeee) "Loan Documents" means, collectively, the MHFA Loan Documents, the SHARP Loan Documents, the BRA Loan Documents, the HoDAG Loan Documents, the Letters of Credit, and any and all other documents executed by the Partnership in connection with the aforesaid Loan Documents.

(ffff) "Loss allocable to the Rental Project" means the loss of the Partnership for federal income tax purposes arising from a sale or other disposition of all or any portion of the Rental Project or the Rental Units.

(gggg) "Management Agent" means Douglass Plaza Management Company, a joint venture between Coastal Property Management Corp. and Barclay Management Co., Inc.

(hhhh) "Management Agreement" means the Management Agreement, dated October 20, 1987, between the Partnership and the Management Agent.

(iiii) "Management Fee" means the annual management fee payable to the Management Agent for its services as Management Agent pursuant to the terms of the Management Agreement.

(jjjj) "Massachusetts Secretary" means the Secretary of State of the Commonwealth of Massachusetts.

(kkkk) "Master Deed" means the Master Deed of Douglass Plaza, to be recorded upon Completion of the Project, pursuant to which the Project will be submitted to a condominium regime expected to consist of three primary condominium units to be known and referenced as the Condominium Flats Unit, the Rental Unit and the Townhouse Unit. The primary condominium unit to be known as the Townhouse Unit is expected to initially consist of the land devoted to the development of the Townhouses.



(ssss) "MHFA Mortgage" refers, for purposes of this Agreement, to the mortgage or mortgages granted by the Partnership to MHFA conveying first mortgage interests in the Condominium Project and the Rental Project as security for the obligations of the Partnership in respect of the MHFA Loan.

(tttt) "MHFA Note" refers, for purposes of this Agreement, to the promissory note or promissory notes delivered by the Partnership to MHFA evidencing the Partnership's obligations to repay the principal amount, and all accrued interest, in respect of the MHFA Loan.

(uuuu) "MHFA Rental Loan" means, for purposes of this Agreement, the first mortgage loan made by MHFA to the Partnership in the original principal sum of \$14,147,680 for a term of thirty-two years and otherwise in accordance with the terms of that certain Construction Loan Agreement dated October 30, 1987 by and between the Partnership and MHFA; the loan is funded by an issue of tax-exempt multi-family housing bonds and is for the purpose of funding construction of the Rental Project.

(vvvv) "MHFA Rental Mortgage" means, for purposes of this Agreement, the Mortgage and Security Agreement to be entered into upon Completion of the Project by the Partnership, as mortgagor, and MHFA, as mortgagee, conveying to MHFA a first mortgage interest in the Rental Project, and if said mortgage is replaced or supplemented by subsequent financing and mortgages in accordance with this Agreement, such term shall refer to any such subsequent financing, mortgage, or mortgages.

(www) "MHFA Rental Note" means, for purposes of this Agreement, the promissory note to be delivered upon Completion of the Project by the Partnership to MHFA representing the Partnership's obligation to repay the principal amount, and all accrued interest, in respect of the MHFA Rental Loan, as said promissory note may be amended, supplemented or replaced in accordance with the terms hereof.

(xxxx) "Minimum Gain" means the amount determined by computing, with respect to each Partnership Nonrecourse Debt, the amount of gain, if any, that would be realized by the Partnership if it disposed of (in a taxable transaction) the asset securing such liability in full satisfaction thereof (and for no other consideration), and by then aggregating the amounts so computed. For purposes of determining the amount of such gain with respect to a liability, the adjusted basis for federal income tax purposes of the asset securing the liability shall be allocated among all the liabilities that the asset secures in the manner set forth in Treasury Regulation Section 1.704-1T(b)(4)(iv)(c) (or successor provisions).





(ddddd) "Net Rental Losses" means the net loss of the Partnership for federal income tax purposes for each taxable year allocable to the construction, leasing and operation of the Rental Project and the Rental Units in the ordinary course of business, calculated without regard to Gain or Loss allocable to the Rental Project realized on the sale of all or a substantial portion of the Rental Project; provided, however, that in determining net loss (i) any tax-exempt income received by the Partnership shall be included as an item of gross income, and (ii) any expenditure of the Partnership described (or treated under Treasury Regulation section 1.704-1(b)(2)(iv)(i) as described) in Section 705(a)(2)(B) of the Code shall be treated as a deductible expense.

(eeeeee) "Net Rental Profits" means the taxable income of the Partnership for federal income tax purposes for each taxable year allocable to the construction, leasing and operation of the Rental Project and the Rental Units in the ordinary course of business, calculated without regard to Gain or Loss allocable to the Rental Project realized on the sale of all or a substantial portion of the Rental Project; provided, however, that in determining taxable income (i) any tax-exempt income received by the Partnership shall be included as an item of gross income, and (ii) any expenditure of the Partnership described (or treated under Treasury Regulation section 1.704-1(b)(2)(iv)(i) as described) in Section 705(a)(2)(B) of the Code shall be treated as a deductible expense.

(ffffff) "Nonrecourse Debt" means any Partnership liability that is considered nonrecourse for purposes of Section 1.1001-2 of the Treasury Regulations (without regard to whether such liability is a recourse liability under Section 1.752-1T(d)(2) of the Treasury Regulations) and any Partnership liability for which the creditor's right to repayment is limited to one or more assets of the Partnership (within the meaning of Section 1.752-1T(d)(3)(ii)(B)(4)(ii) of the Treasury Regulations).

(ggggg) "Nonrecourse Liability" means any Nonrecourse Debt (or portion thereof) for which no Partner bears (or is deemed to bear) the economic risk of loss within the meaning of Section 1.704-1T(b)(4)(iv)(k)(3) of the Treasury Regulations.

(hhhhh) "Notice" means a writing containing the information required by this Agreement and sent by registered or certified mail, postage prepaid, return receipt requested, or sent by commercial delivery service, by hand delivery, or by telecopy, paid for by the sender, to a Partner at the last address or addresses designated for such purpose by such partner in Article XIV(2) or as provided therein, the date of receipt of such registered mail or certified mail or the date of actual receipt of such writing by commercial delivery service, hand delivery or telecopy, being deemed the date of such Notice.



(iiii) "Notice Certifications" has the meaning set forth in Article III(2)(c).

(jjjj) "Operating Deficit" means at any time or with respect to any period of time after the date of Completion, the amount by which the collected gross receipts allocable to the Rental Project (including government subsidies actually received during such period, but excluding Capital Contributions, Refinancing Proceeds and Rental Project Sales Proceeds), reduced (but not below zero) by any Mortgage debt service payments (excluding debt service payments on the MHFA Condominium Loan and the BRA Condominium Loan), are less than the amount necessary to meet all of the costs and expenses of any type due and payable incidental to the operation and business activities of the Rental Project, including, without limitation, taxes and insurance payments allocable to the Rental Project, the Management Fee, to the extent then due and payable, and reserves and deposits required by any Mortgagee or established by the General Partner in connection with the operation of the Rental Project, but excluding (i) any cost or expense incurred in connection with the matters described in Article V(14)(b) which becomes due and payable after the date of Completion, (ii) payment of the Development Fee or any other fees payable in respect of the Rental Project to be paid from Capital Contributions, (iii) payment of any principal or interest on loans from Partners, or (iv) any distributions to Partners pursuant to the provisions of Article VIII or Article XII(2).

(kkkk) "Operating Deficit Contribution" has the meaning set forth in Article V(15).

(llll) "Operating Expenses" means all the costs and expenses of any type incident to the administration of the Partnership and to the ownership and operation (i) of the Project, prior to Completion, and (ii) the Rental Project only, subsequent to Completion, including without limitation Capital Improvements (prior to Completion), taxes, insurance premiums, repairs and maintenance expenses incurred in the ordinary course of business, payments of principal and interest, to the extent due and payable under the Loan Documents, and other Partnership debts and the costs of operation, maintenance, repairs and funding of reserves. Notwithstanding the foregoing, however, distributions and allocations to Partners under Article VIII shall not be deemed Operating Expenses.

(mmmm) "Option Agreement" means the Option Agreement, a draft copy of which is attached hereto as Exhibit G, expected to be entered into by and between the Partnership and MHFA and/or EOCD pursuant to the terms of which the Partnership will grant an option to MHFA and/or EOCD to acquire the Designated Low-Income Rental Units.



(nnnnn) "Parking Garage Facility" refers to the underground parking garage facility consisting of 146 parking spaces to be constructed as part of the Project. Upon Completion, the Parking Garage Facility will become part of the Rental Unit under the Master Deed. Thirty-three (33) of the parking spaces will be designated for use of the Condominium Flats Unit and perpetual easements for their use by the purchasers of the Condominium Units will be granted by the Partnership. Construction of the Parking Garage Facility will be funded with the proceeds of the HoDAG Loan (applied to the spaces included as part of the Rental Project) and the MHFA Condominium Loan (applied to the spaces included in the Condominium Project).

(ooooo) "Partner" or "Partners" means the General Partner and/or the Limited Partner, either individually or collectively.

(ppppp) "Partner Nonrecourse Debt" means any Nonrecourse Debt (or portion thereof) for which a Partner bears (or is deemed to bear) the economic risk of loss within the meaning of Section 1.704-1T(b)(4)(iv)(k)(1) of the Treasury Regulations.

(qqqqq) "Partnership" means Douglass Plaza Housing Company I Limited Partnership, a limited partnership formed under and pursuant to the Act.

(rrrrr) "Partnership Percentage", as to any Partner, means the percentage in the Partnership shown opposite the name of such Partner in Exhibit A, as Exhibit A may be amended from time to time in accordance with this Agreement.

(sssss) "Partnership Property" means the Partnership's interest in the Land and improvements comprising a housing project with incidental commercial and parking facilities known as Douglass Plaza, located in the City of Boston, Massachusetts, which will consist of (i) 121 units of rental housing, and a resident superintendent's unit, located in two buildings, (ii) 33 residential condominium units located in one building, (iii) nine three-story residential townhouse units planned to be built in the future, (iv) approximately 6,550 square feet of street level commercial space, and (v) and an underground parking garage facility with 146 parking spaces. The legal description and street addresses of such property is set forth on Exhibit B attached hereto and made a part hereof, together with such additions thereto as may hereafter be acquired by the Partnership in accordance with this Agreement. For purposes of this Agreement, the term "Partnership Property" shall be deemed not to include any Condominium Units or parking spaces included in the Condominium Project that have been sold or otherwise transferred by the Partnership at the relevant time that any particular provision referencing the "Partnership Property" may be applied or interpreted.



(ttttt) "Person" means an individual or an entity such as, but not limited to, a corporation, general partnership, joint venture, limited partnership, trust, cooperative, or association and the heirs, executors, administrators, legal representatives, successors, and as of such Person where the context so admits.

(uuuuu) "Placement Agent" means Boston Investment Securities Corporation, a Massachusetts corporation.

(vvvvv) "Placement Agreement" means that certain Placement Agreement, dated as of August 1, 1988, by and between the Partnership and the Placement Agent pursuant to the terms of which the Placement Agent has been engaged to offer and sell the Limited Partnership interest in the Partnership.

(wwwww) "Placement Commission" means the commission paid to the Placement Agent pursuant to the terms of the Placement Agreement.

(xxxxx) "Project" means the aggregate of all of individual Units, the Parking Garage Facility, the commercial space and the common areas included as part of the Partnership Property.

(yyyyy) "Project Documents" means Construction Contract, the Architect's Agreement, the Management Agreement, the Master Condominium Documents, the Master Lease, that certain Preliminary Agreement (including all Exhibits thereto), dated as of October 22, 1987, between the Partnership and Pianocraft Guild Associates, that certain Final Agreement (including all Exhibits thereto), dated as of October 30, 1987, between the Partnership and Pianocraft Guild Associates, certain Notices of Dismissal, dated October 30, 1987, filed with the Pianocraft Guild Associates with the Housing Court Department of the City of Boston Division with respect to actions brought against the General Partner and others, commitments and agreements in connection with the Chapter 707 subsidy, and any other documents in connection therewith, or any other agreements, contracts or documents with any other federal, state or local governmental or private bodies which may be necessary or desirable to comply with the applicable Regulations to accomplish the purposes of the Partnership.

(zzzzz) "Refinancing Proceeds" has the meaning set forth in Article VIII(1)(c).

(aaaaaa) "Regulations" means the Regulatory Agreement between the Partnership and MHFA; the MHFA enabling act; the National Housing Act; and the United States Housing Act of 1937; the Massachusetts Uniform Limited Partnership Act; the Massachusetts State Housing Assistance Act for Rental Product





Act; the Massachusetts Rental Assistance Program under M.G. Ch. 121B, Sec. 42.44A; and the rules and regulations promulgated under each of the foregoing, as each of the foregoing may be made, published or amended from time to time but only to the extent applicable to the Partnership or the Project, as the case may be.

(bbbbbb) "Regulatory Agreement" means the Regulatory Agreement, dated October 30, 1987, by and between the Partnership and MHFA, as the same may be amended.

(ccccc) "Regulatory Allocations" has the meaning set forth in Article VII(4)(e).

(ddddd) "Rental Project" means, for purposes of the Agreement, that portion of the Project expected to consist (i) a four-story building facing Tremont Street, containing rental apartments and a superintendent's unit, (ii) a seven-story building facing Columbus Avenue, containing 82 rental apartments and a management office, (iii) approximately 6,550 square feet of commercial/retail space, (iv) a common room and exterior open space; and (v) 113 of the parking spaces included as part of the Parking Garage Facility. The drawings attached as part of Exhibit B hereto delineates, in a general manner, those buildings (or areas within buildings) which are included as part of the Rental Project.

(eeeeee) "Rental Project Sale Proceeds" has the meaning set forth in Article VIII(1)(b).

(ffffff) "Rental Units" refers to the 121 separate residential rental housing units comprising the Rental Project.

(gggggg) "Segregated Account" means an interest-bearing segregated Partnership bank account.

(hhhhh) "Service" means the Internal Revenue Service.

(iiiii) "Service LIH Reduction Amount" has the meaning set forth in Article III(3)(b).

(jjjjj) "SHARP Contract" means the State Housing Assistance for Rental Production Contract, dated as of October 31, 1987, as the same may be amended, by and among the Partnership, MHFA, and EOCD providing for housing subsidy to the Partnership up to the maximum annual amount of \$53

(kkkkk) "SHARP Loan" means the annual loans made to the Partnership from time to time pursuant to the SHARP Contract.



(llllll) "SHARP Loan Documents" means all documents evidencing, securing or incidental to the SHARP Loan, including without limitation the SHARP Contract, the SHARP Note and Option Agreement, if any, and any and all amendments that be made from time to time in the future with respect to the foregoing.

(mmmmmm) "SHARP Note" means the SHARP Subsidy Repayment Note of the Partnership to MHFA, dated October 1, 1987, as may be amended, which evidences the SHARP Loan.

(nnnnnn) "State" means the Commonwealth of Massachusetts.

(oooooo) "Substitute Limited Partner" means that Person or those Persons admitted from time to time to the Partnership as a Limited Partner or Limited Partners in accordance with the provisions of Article X hereof and so reflected on Exhibit A, as such Exhibit A may be amended from time to time in accordance with this Agreement.

(pppppp) "Tax Matters Partner" means the General Partner.

(qqqqqq) "Term" means the period of time the Partnership shall continue in existence as stated in Article II(7).

(rrrrrr) "Title Policy" means that certain title insurance policy (No. OD-672829) issued by Ticor Title Insurance Company in favor of the Partnership, dated November 2, 1987, as increased by Endorsement No. E-1, dated March 1989, insuring the Partnership's title to the Partnership Property in the amount of \$27,881,499.

(ssssss) "Total LIH Reduction Amount" has the meaning set forth in Article III(3)(a).

(tttttt) "Total Service LIH Reduction Amount" has the meaning set forth in Article III(3)(b).

(uuuuuu) "Townhouses" means the nine three-story residential townhouses condominium units to be constructed as part of the Condominium Project at an unspecified date in the future.

(vvvvvv) "Treasury Regulations" means temporary final regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

(wwwwww) "Voluntary Advances" means loans of the General Partner to the Partnership made in accordance with Article V(15)(c), or loans deemed to be made by the Limited Partner in accordance with the provisions of Article III(



(xxxxxx) "Units" mean the individual units of residential housing included as part of the Project.

(yyyyyy) "USTMB" means UST Merchant Bancorp, Inc., Massachusetts corporation.

2. Generic Terms. Unless the context clearly indicates otherwise, where appropriate the singular shall include the plural and the masculine shall include the feminine or neuter and vice versa, to the extent necessary to give the terms defined in this Article I and/or the terms otherwise used in this Agreement their proper meanings.

## ARTICLE II

### Restatement and Continuation; Name; Principal Place of Business; Registered Agent; Title to Partnership Property; Purposes; Term; Filing of Agreement

1. Withdrawal of Robert M. Kargman as limited Partner; Restatement and Continuation of Partnership. Robert M. Kargman hereby withdraws as a limited partner of the Partnership and has received a full refund of his Capital Contribution, and Fannie Mae is hereby admitted as the Limited Partner of the Partnership. The parties hereto, constituting all of the Partners of the Partnership, hereby amend and restate the original certificate and agreement of Douglass Plaza Housing Company I Limited Partnership in its entirety and continue the Partnership under the Act.

2. Name. The name of the Partnership is "DOUGLASS PLAZA HOUSING COMPANY I LIMITED PARTNERSHIP."

3. Principal Place of Business. The principal place of business of the Partnership shall be located at c/o BIDC, 151 Tremont Street, Boston Massachusetts 02111.

4. Registered Agent. The registered agent for service of process on the Partnership in the Commonwealth of Massachusetts shall be Robert M. Kargman, c/o BIDC, 151 Tremont Street, Boston Massachusetts 02111.

5. Title to Partnership Property. Legal title to the Partnership Property shall be in the name of the Partnership, and no Partner, individually, shall have any ownership of such Partnership Property; provided, however, that upon Completion Partners and/or Affiliates of Partners may purchase one or more of the Condominium Units held for sale by the Partnership pursuant to the terms set forth in Article V(18).



8. Filing of Agreement. Immediately after the execution of this Agreement by the Partners, the General Partner shall cause this Agreement to be filed for record in the office of the Massachusetts Secretary in accordance with the Act. The General Partner shall thereafter immediately cause a date-stamped copy of this Agreement, marked "filed" by the Massachusetts Secretary, to be furnished to each Partner.

### ARTICLE III

#### Partners and Partnership Percentages; Capital Contributions; Adjustments to Capital Contributions; No Interest on Capital Contributions; No Right to Require Repayment of Capital; No Third-Party Beneficiary

1. Identity of Partners and Partnership Percentages. The name and business address of the General Partner and the Limited Partner are as identified on Exhibit A, as such Exhibit may be amended from time to time in accordance with this Agreement and each such Partner has the Partnership Percentage indicated next to its name and business address.

#### 2. Capital Contributions.

(a) The General Partner has contributed to the capital of the Partnership the sum set forth after the General Partner's name on Exhibit A.

(b) On the Admission Date, the Limited Partner shall be obligated to (and does hereby covenant and agree to) contribute to the capital of the Partnership, by wire transfer or other form of available funds, the sum indicated as due on the Admission Date and set forth after the Limited Partner's name on Exhibit A (the "Initial Installment"). The Limited Partner shall make additional installment payments of its Capital Contribution (the "Additional Installment(s)") in accordance with the schedule of amounts and dates of payments listed on Exhibit A; provided, however, that the required date of payment of any Additional Installment (i) shall be the Additional Installment Due Date, and (ii) may be extended in accordance with Article III(2)(d).

(c) The General Partner shall deliver Notice to the Limited Partner (the "Additional Installment Payment Notice") of the date on which any Additional Installment is due not more than thirty (30) days in advance of the due date of each Additional Installment, which Notice shall state the amount of the Additional Installment and, in reasonable detail, the manner of calculation thereof. Unless otherwise provided below, the General Partner shall certify on each such Notice that, at the time of the Notice:





(i) the operation of the Rental Units of Project in all respects complies with the provisions of Section 42 of the Code;

(ii) no default (or event which, with the giving of notice or the passage of time or both, would constitute a default) has occurred and is continuing under Loan Documents or the Project Documents and the Loan Documents and the Project Documents are in full force and effect;

(iii) the Partnership owns good record and insurable title to the Rental Project and each of the Rental Units, free and clear of any liens, charges, or encumbrances other than the Mortgages and the Regulations, matters set in the Title Policy, and mechanics' or other liens which have been bonded against in such a manner as to preclude the holder of such lien from having any recourse to the Partnership Property, the Rental Project, any of the Rental Units, or the Partnership for the debt secured thereby, and the General Partner has received no notice of any such liens, charges, encumbrances;

(iv) no Event of Bankruptcy (or event which with the giving of notice or the passage of time or both, constitute an Event of Bankruptcy) has occurred and is continuing with respect to the Partnership, the General Partner or any Affiliate of the General Partner;

(v) the General Partner is not in breach of any provision of this Agreement to be observed or performed by the General Partner which breach would have a material adverse effect on the Partnership, the Partners, or the Partnership Property;

(vi) no failure or refusal of the Mortgagee to make an advance of funds as and when due to be made under the Loan Documents or the Mortgages has occurred and is continuing;

(vii) all Credit Adjuster Advances required to be made by the General Partner, pursuant to Article III(3) of the date of any Additional Installment Payment Notice have been made;

(viii) all Development Advances required to be made by the General Partner as of the date of any Additional Installment Payment Notice, pursuant to Article V(14), either (a) have been made, or (b) will be made, in the manner provided in Article III(2)(d) below, from the proceeds of the Additional Installment which is the subject of the Notice accompanying this Certification;



(ix) all Operating Deficit Contributions required to be made by the General Partner as of the date any Additional Installment Payment Notice, pursuant to Article V(15), either (a) have been made, or (b) will be made, in manner provided in Article III(2)(d) below, from the proceeds of the Additional Installment which is the subject of the Notice accompanying this Certification;

(x) all funds required to be deposited in the Segregated Account by the General Partner pursuant to Article III(3) have been so deposited;

(xi) to the best knowledge of the General Partner after due inquiry the Partnership Property contains no substance known to be hazardous such as hazardous waste, lead-based paint, asbestos, methane gas, urea formaldehyde insulation, oil, toxic substances, underground storage tanks, polychlorinated biphenyls (PCBs), and radon, and the Partnership Property is not affected by the presence of or release of toxic substances, or other pollutants that could be a detriment to the Partnership Property or the Project nor is it in violation of any local, state, or federal law or regulation, no violation of the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substance Control Act, Safe Drinking Water Control Act, Comprehensive Environmental Response Compensation and Liability Act, or Occupational Safety and Health Act has occurred or is continuing. Neither the Partnership nor the General Partner have received any notification from any source whatsoever of the existence of any such hazardous condition on the Partnership Property or of a violation of any such local, state, or federal law or regulation with respect to the Partnership Property. Notwithstanding the foregoing, the General Partner and the Limited Partner are each aware of the conditions specified in the Environmental Report affecting the Partnership Property and the Limited Partner hereby acknowledges and agrees to such conditions, to the degree specifically described in the Environmental Report, are not of such a nature and a magnitude as to prevent the General Partner from giving, and the Limited Partner from accepting, the certification contained in the Article III(2)(c)(xi), or to affect the continuing investment of the Limited Partner in the Partnership, assuming no change in such conditions existing on the Partnership Property, the laws or regulations governing the presence or removal of such condition, which would adversely affect the Partnership Property;

(xii) the SHARP Loan is available to the Partnership pursuant to the terms and conditions set forth in the SHARP Contract.



(xiii) On or before the Additional Installment Due Date of the first Additional Installment, (A) Completion has occurred, (B) MHFA has released its security interest in "syndication proceeds" of the Partnership, and (C) the HoDA Loan Documents have each been duly executed and delivered by the Partnership, and/or the City, and/or the BRA, and/or HU as the case may be; and

(xiv) On or before the Additional Installment Due Date of the second Additional Installment, (A) the Project has been submitted to a condominium regime by the recording the Master Deed, (B) the MHFA Note and Mortgage have been bifurcated into the MHFA Rental Note and Mortgage and the MHFA Condominium Note and Mortgage, (C) the BRA Note and Mortgage have been bifurcated into the BRA Rental Note and Mortgage and the BRA Condominium Note and Mortgage, (D) no documents or instruments securing or evidencing the indebtedness related solely to the Rental Project provide that the borrower thereunder shall be in default in the event of a default under the MHFA Condominium Note and Mortgage, or under the BRA Condominium Note and Mortgage, or under any other document or instrument representing or securing indebtedness with respect to the Condominium Project, (E) neither the MHFA Condominium Note and Mortgage, nor the BRA Condominium Note and Mortgage, nor any other document or instrument representing or securing indebtedness with respect to the Condominium Project, permit any recourse against the Rental Project, or any portion thereof, or the Partnership in the event of a default under any such documents or instruments, and (F) the Loan Documents have not otherwise been modified to extend, expand or impose any new obligation or condition that would materially adversely affect the Partnership, the Limited Partner, or the investment of the Limited Partner in the Partnership.

The aforesaid certifications (i) - (xiv) in this Article III(2)(c) are hereinafter referred to as "Notice Certifications."

(d) Should the General Partner fail to certify that each of the Notice Certifications is true and correct in its Additional Installment Payment Notice, the Additional Installment Due Date shall be deferred until such time as the General Partner is able to and does certify that each of the Notice Certifications is true, and failure to pay such Additional Installment prior to such time shall not constitute a default of the Limited Partner. Notwithstanding the foregoing, if any Additional Installment which otherwise would have become due has not become due because of a failure to satisfy any condition to the payment thereof, but any and all such unsatisfied conditions can be satisfied by the payment of money (after utilization for such purpose of any available funds of the Partnership) in an amount not in excess of the



difference between the amount of such Additional Installment less any portion thereof required to fund any Credit Advance required to be made pursuant to Article III(3) her then such Additional Installment shall be paid notwithstanding the failure to satisfy such condition, provided that when Additional Installment is paid to the Partnership (i) the required amount of such Additional Installment is utilized to satisfy such condition; (ii) any acceleration of maturity, indebtedness and any other default and any action or proceeding which was the basis of the failure to satisfy such condition which resulted from such failure will be (upon application of such funds) effectively waived and, in the case of any such action or proceedings, terminated with prejudice, and (iii) there is not any reasonable ground for the General Partner to believe that the Partnership or the Project will not be in sound financial condition after giving effect to the satisfaction of such condition, and provided further that a certificate to evidence the foregoing, it being understood that the Limited Partner may rely on such certificate which shall be treated as a Notice Certification, as defined in Article III(2)(c), for purposes of this Agreement.

(e) In the event that the Limited Partner fails to pay any Additional Installment of its Capital Contribution, such Additional Installment may be adjusted in accordance with Article III(3)) by the Additional Installment Due Date and such failure is not cured within fifteen days after written Notice of such failure, the Limited Partner shall be deemed to be in default of its obligations under this Agreement (unless such Additional Installment is deposited into an escrow account in accordance with Article III(2)(i) or payment thereof is deferred pursuant to Article III(2)(d)). Upon the default of the Limited Partner in its obligations to pay any Additional Installment, the General Partner shall be entitled to take all actions available to the Partnership, including, without limitation, instituting a suit at law or at equity; provided, however, that in the event of a Final Determination which provides that the Limited Partner shall pay to the Partnership all Additional Installments and any accrued interest thereon, such payment, increased by the amount of any reasonable costs and expenses (including reasonable attorney's fees) incurred by the Partnership in pursuing collection of such Additional Installment from the Limited Partner (if there is a Final Determination that the Limited Partner acted frivolously or in bad faith), shall constitute the sole remedy of the Partnership under this Article III(2). Upon such default of the General Partner, at its option, may sell or assign the Interest of the defaulting Limited Partner, or cause the Partnership to redeem such Interest, in accordance with the provisions of Article III(2)(g). Such default may be cured by the Limited Partner at any time prior to the execution by the General Partner of a binding agreement to purchase or sell the





defaulting Limited Partner's Interest, pursuant to Article III(2)(g), by payment of the sum then owing with interest thereon, from the Additional Installment Due Date(s) of an Additional Installment(s) in default until the date of pay to the Partnership, at an annual rate equal to the lesser (i) eighteen percent (18%), or (ii) the maximum rate permitted under applicable law. Upon payment of all amounts owed pursuant to the terms of this Article III(2)(e) as a result of the default of the Limited Partner, and provided such payment is received prior to the execution of a binding agreement to transfer the defaulting Limited Partner's Interest, as aforesaid, the Limited Partner shall be fully reinstated to former Interest and Partnership Percentage in the Partnerships including, but not limited to, its former share of distributions, as though a default under this Article III(2) had not occurred.

(f) Without limiting the availability of any other remedies available to the Partnership or the General Partner if a default described in Article III(2)(e) occurs, then without any consent or other action on the part of the defaulting Limited Partner (and the Limited Partner, by execution of this Agreement, expressly consents to the operation of the provisions of this Article III(2)(f), subject to the terms of Article III(2)(e)), the defaulting Limited Partner shall not receive any subsequent allocations of profits, losses or Credits, nor any subsequent distributions of cash flow or Sale or Refinancing Proceeds attributable to the Interest from the Additional Installment Due Date of the Additional Installment in default; provided, however, that the General Partner, at any time prior to the expiration of the fifteen-day cure period specified in Article III(2)(e), may, in its discretion, extend such fifteen-day cure period by written Notice to the Limited Partner and, for so long as any such extension is in effect, the Limited Partner shall continue to be allocated any profits, losses, gains or Credits attributable to its interest and shall not be deemed to be in default. Until and until such time as the Interest of the defaulting Limited Partner is assigned and transferred pursuant to Article III(2)(g) (or upon the expiration of any written extension of the period for curing any default of the Limited Partner in accordance with the preceding sentence), any cash distributions and any profits, losses and Credits which would otherwise be allocated to the Limited Partner, but for the application of the provisions of Article III(2)(f), shall be allocated to the General Partner.

(g) Subject to the provisions of Article III(2)(e), in the event of a default pursuant to Article III(2)(e), the Partnership, subject only to the Regulations and provisions of the Loan Documents, may, at the election of the General Partner:



(i) offer to sell the defaulting Limited Partner's Interest to any other Person on such terms and conditions as the General Partner deems most favorable under the circumstances, provided that the purchase price shall be payable in full by means of cash, check or wire transfer of funds upon the transfer of the Interest. The amount which the Person acquiring the Interest of the defaulting Limited Partner shall pay in consideration of the acquisition of such Interest shall be applied in the following order: (i) First, to the payment of all reasonable fees and expenses incurred by the Partnership in connection with such sale; (ii) second, to the payment of the Additional Installment payment and any interest then required to be paid by the defaulting Limited Partner; (iii) third, to the payment, if any, of any future Additional Installments of the defaulting Limited Partner; and (iv) fourth, any balance to the defaulting Limited Partner; or

(ii) cause the Partnership to redeem the Interest of the defaulting Limited Partner. In the event that the Partnership elects to redeem the Interest of the defaulting Limited Partner, it shall so notify the Limited Partner of such intention in writing, which written notice shall be deemed to be a binding agreement to purchase the Interest. Such notice shall provide for a redemption which shall be not less than seven days, and not more than thirty days, following the date of such notice. On the redemption date the Partnership shall acquire the Interest of the defaulting Limited Partner for a purchase price payable by check or wire transfer of funds, in an amount equal to the amount of the Capital Contribution of the Limited Partner theretofore paid to the Partnership, minus (i) the sum of any prior cash distributions to the Limited Partner pursuant to Article VIII and/or Article XII, (ii) the amount of any Credits theretofore allocated to the Limited Partner and not recaptured as a result of such purchase, and (iii) the reasonable fees and expenses incurred by the Partnership in connection with such redemption. The Partnership shall not be responsible for any interest on the Capital Contribution of the selling Limited Partner or for any tax consequences of any such purchase.

Upon the sale or redemption of the defaulting Limited Partner's Interest, and the payment of the purchase price therefor, in accordance with this Article III(2)(g), the Limited Partner, without any consent or other action on the part of the defaulting Limited Partner (and the Limited Partner, by execution of this Agreement, expressly consents to the operation of the provisions of this Article III(2)(g)), shall cease to



Partner of the Partnership and the General Partner shall execute and file an amendment to the Certificate with the appropriate filing offices evidencing the withdrawal of the Limited Partner as a Partner of the Partnership.

(h) The obligations of a defaulting Limited Partner to the Partnership shall be extinguished upon completion of transfer of the defaulting Limited Partner's Interest pursuant to Article III(2)(g). The rights and benefits of a defaulting Limited Partner attributable to such Interest in the Partnership shall irrevocably terminate on the date of admission of a purchaser of such Interest pursuant to Article III(2)(g)(i) as a Substitute Limited Partner; provided, however, that in the event of a transfer of the Limited Partner's Interest pursuant to Article III(2)(g)(i), the obligation of the defaulting Limited Partner to make Additional Installments shall only be extinguished by the amount of the aggregate payments made by the purchaser or purchasers of the defaulting Limited Partner's Interest which are applied against such Additional Installments pursuant to the order of priority set forth in Article III(2)(g)(i).

(i) If at the time of any Additional Installment Due Date the Limited Partner disputes (x) its obligation to pay such Additional Installment, (y) the amount of such Additional Installment then due, or (z) the truthfulness, veracity or correctness of any Notice Certification(s) or any attending details or calculations, the Limited Partner shall not be deemed to be in default for failure to pay to the Partnership the disputed portion of such Additional Installment, or the entire amount of such Additional Installment if payment of the entire amount is disputed, and neither the Partnership nor the General Partner shall be entitled to exercise any right or remedy for such failure to make payment, other than as provided in this Article III(2)(i), provided that the Limited Partner in accordance with the provisions of paragraphs (A) through (C) of this Article III(2)(i), deposits the disputed portion of such Additional Installment, or the entire amount of such Additional Installment if payment of the entire amount is disputed, in an escrow account pending a resolution of such dispute.

(A) In the event that the Limited Partner proposes to deposit all or any portion of any Additional Installment due on its Capital Contribution in such an escrow account pursuant to the provisions of this Article III(2)(i), the Limited Partner shall, not later than ten (10) days following the Additional Installment Due Date of such Installment, deliver a Notice (a "Dispute Notice") to the General Partner and to United States Trust Company, 40 Court Street, Boston, MA 02108, Attn: David Drollet, as escrow agent (the "Escrow Agent"), informing the General Partner and the Escrow Agent of its intention to deposit all or



immediately be released by the Escrow Agent to the Limited Partner. If there is a Final Determination that the Limited Partner acted frivolously and/or in bad faith failing to pay its Additional Installment to the Partnership on the Additional Installment Due Date, then the Limited Partner shall be liable to the General Partner and/or the Partnership for attorneys' fees and for damages suffered by the General Partner and/or the Partnership caused by the Limited Partner's failing to make its Additional Installment on the Additional Installment Due Date. If there is a Final Determination that the General Partner acted fraudulently in (i) asserting the Limited Partner's obligation to pay an Additional Installment, (ii) delivering a Notice Certification or attending due or calculations, then the General Partner shall be liable to the Limited Partner for attorneys' fees and for damages suffered by the Limited Partner.

(D) Notwithstanding the foregoing, in the event the Limited Partner fails to pay any portion of any Additional Installment when due and such failure has occurred as a result of a bank processing or wire transfer error, then the Limited Partner shall have five days after the Additional Installment Due Date to cure such default.

### 3. Adjustments to Installments of Limited Partner's Capital Contribution.

(a) The Credit forecasted to be claimed by the Partnership for any taxable year of the Partnership (the "Credit Sum") is \$320,959 for the taxable year ending December 31, 1989, \$802,397 per year for the nine subsequent taxable years ending December 31, 1998, and \$481,438 for the taxable year ending December 31, 1999. In the event the Credit which the Partnership claims (as determined by the Accountants) for any taxable year is less than the LIH Credit Sum for that year, and/or the Partnership or the Accountants determine that the Partnership must recapture all or a part of the Credit claimed by the Partnership in any previous taxable year, then the amount of the next succeeding Additional Installment shall be reduced by the sum of (i) 67.5% of the amount by which the Credit claimed by the Partnership for any taxable year is less than the LIH Credit Sum for such taxable year (the "LIH Reduction Amount"), and/or (ii) 67.5% of the aggregate amount of the Credit the Partnership or the Accountants determine be recaptured during such taxable year (the "LIH Recapture Amount"), plus (iii) the LIH Gross-Up Amount (as hereinafter defined). The sum of the LIH Reduction Amount and/or the Recapture Amount plus the LIH Gross-Up Amount is the "Total LIH Reduction Amount." In the event that the Total LIH Reduction Amount exceeds the amount of the next succeeding Additional





Installment, such excess shall reduce the second succeeding Additional Installment, and subsequent Additional Installments until such excess is eliminated. If the Total LIH Reduction Amount exceeds the sum of all subsequent Additional Installments (or if all Additional Installments have been made), the General Partner shall immediately make a Credit Adjuster Advance equal to the amount of such excess (or the Total LIH Reduction Amount) and the Partnership shall immediately thereafter make a special distribution to the Limited Partner, neither to reduce nor to be limited by Net Cash Flow, equal to the amount of such excess (up to the LIH Reduction Amount).

(b) In the event there is at any time an ongoing audit by the Service in which the Service is asserting, or proposes to assert by means of a sixty day letter, that the Credit available to the Partnership for any taxable year less than the amount of Credit claimed by the Partnership that year, or that all or a portion of the Credit claimed respect to any prior taxable year(s) must be recaptured pursuant to Section 42(j) of the Code or is unavailable to the Partnership, the portion of the next succeeding Additional Installment equal to the sum of (i) 67.5% of the excess of the aggregate Credit claimed by the Partnership or to be claimed by the Partnership in all taxable years open as of the time of the audit and all subsequent taxable years over the aggregate amount of Credit asserted by the Service to be available to the Partnership for the current and all prior taxable years and the amount which would be asserted by the Service to be available to the Partnership if the Service reasoning was applied to years not yet under audit (the "Service LIH Reduction Amount") plus (ii) the LIH Gross-Up Amount, shall be placed in a Segregated Account. The sum of the Service LIH Reduction Amount plus the LIH Gross-Up Amount is the "Total Service LIH Reduction Amount." The Total Service LIH Reduction Amount shall be held in the Segregated Account until a Final Determination occurs. If the Total Service LIH Reduction Amount exceeds the amount of the next succeeding Additional Installment, the Partnership shall place the next succeeding Additional Installment, and subsequent Additional Installments (as and when paid by the Limited Partner pursuant to Article III), directly into the Segregated Account, until the cumulative amounts added to the Segregated Account by reason of this sentence equal such excess. If the Total Service LIH Reduction Amount exceeds the sum of all subsequent Additional Installments (or if all Additional Installments have been made), the General Partner shall, subject to the provisions of Article III(3)(c), immediately make a Credit Adjuster Advance equal to the amount of the excess (up to the Total Service LIH Reduction Amount) and the Partnership shall immediately thereafter place such amount in the Segregated



Account. Within ten business days after the date of the Determination with respect to any portion of the Credit General Partner shall cause the Partnership to make the following distributions from the Segregated Account: (v) an amount equal to 67.5% of the disputed portion of the Credit held in the Final Determination to be available to the Partnership shall be placed in the Partnership's general account, (w) an amount equal to 67.5% of the disputed portion of the Credit held in the Final Determination not to be available to the Partnership shall be distributed to the Limited Partner, (x) an amount equal to the interest, penalties, and other federal income tax liability incurred by the Limited Partner in connection with the Final Determination (including liabilities incurred in connection with the distribution from the Segregated Account) shall be distributed to the Limited Partner, (y) the amount of any remaining Gross-Up Amount attributable to the portion of the Credit not available to the Partnership shall be placed in the Partnership's general account, and (z) interest and earnings on the funds held in the Segregated Account shall be placed in the Partnership's general account or distributed to the Limited Partner, respectively, in proportion to the amounts distributed to each of them pursuant to Article III(3)(b) and (w). With respect to amounts placed in the Partnership's general account pursuant to Article III(3)(b)(v) and (z) the Partnership shall make a special distribution to the General Partner, neither to reduce nor be limited by Net Cash Flow, to exceed the amount of the General Partner's Credit Adjuster Advances made pursuant to Article III(3)(b), (g) or (h) or interest thereon.

(c) Notwithstanding any provision of Article III(3)(a) or (b) to the contrary, the obligation of the General Partner to make Credit Adjuster Advances (other than Credit Adjuster Advances required by Article III(3)(h) or (i)) shall in no event exceed, in the aggregate, the sum of two million dollars (\$2,000,000) (the "Credit Adjuster Advance Obligation") and such obligation shall be reduced from time to time by the amount of any Credit Adjuster Advances made by the General Partner pursuant to Article III(3)(a) or (b) and shall terminate upon the latest to occur of (i) the Additional Installment Due Date of the final Additional Installment of the Limited Partner's Capital Contribution; (ii) the date upon which there is a Final Determination with respect to the Partnership items for the 1990 taxable year. In the event (X) at any time prior to the payment in full of the Limited Partner's Capital Contribution the Total LHM Reduction exceeds the sum of all unpaid Additional Installments and the Credit Adjuster Advance Obligation (reduced by the amount of any Credit Adjuster Advances previously made by the General Partner pursuant to Article III(3)(a) or (b)); or (Y) at any time subsequent to the payment in full of the Limited Partner's Capital Contribution and the termination of the Credit Adjuster Advance Obligation, the Credit Adjuster Advance Obligation shall be deemed to be satisfied.



Advance Obligation there arises or exists a Total LIH Reduction Amount in excess of any Credit Adjuster Advances then the Segregated Account (such excess Total LIH Reduction Amount) either of the cases described in clauses (X) and (Y) be hereinafter referred to as the "Excess LIH Reduction Amount" then the amount of any such Excess LIH Reduction Amount shall be deemed to be a Voluntary Advance made by the Limited Partner to the Partnership, as of the first day of the year following the taxable year to which the Excess LIH Reduction Amount relates, and shall be repaid to the Limited Partner as provided in Article VIII and Article XII(2). Interest on such a Voluntary Advance shall be determined accordance with Article V(15)(c).

(d) "LIH Gross-Up Amount" means the amount, when added to the LIH Reduction Amount or the Service LIH Reduction Amount, as the case may be, will produce an amount equal to the LIH Reduction Amount or the Service LIH Reduction Amount, as the case may be, after taking into account the Limited Partner's liability for interest or penalties or federal income tax liability of the Limited Partner in connection with (i) distributions to the Limited Partner pursuant to Article III(3)(a) or (b), and (ii) in the case of the Service LIH Reduction Amount, the disputed amounts.

(e) In the event the Credit which the Partners claims (as determined by the Accountants) with respect to a taxable year is greater than the LIH Credit Sum for that year then the amount of the LIH Credit Sum for such year shall be increased, for purposes of Article III(3)(a) and (b), by the excess of the Credit claimed by the Partnership for such year over the LIH Credit Sum amount for such year (as specified in Article III(3)(a)), and the amount of the next succeeding Additional Installment shall be increased by 67.5% of the amount by which the Credit claimed by the Partnership for such year exceeds the LIH Credit Sum amount for such year (as specified in Article III(3)(a)). If it is determined that the increase in the Capital Contribution of the Limited Partner shall be required hereunder at a time when there shall be unpaid Additional Installments remaining, the amount of the increase shall be payable by the Limited Partner within (60) days following the Limited Partner's receipt of a written Notice from the General Partner informing of such increase and requesting payment of the same. From the proceeds of any increase in the Capital Contribution of the Limited Partner effected subsequent to Completion, there shall be special distributions to the General Partner (neither to reduce nor to be limited by Net Rental Cash Flow) an amount equal to the amount of all unrepaid Credit Adjuster Advances made pursuant to Article III(3)(h) and/or (i).

(f) Notwithstanding the foregoing, however, no adjustments shall take effect pursuant to this Article I unless and until the cumulative aggregate amount thereof be at least \$100,000.



(g) If the Accountants, or the Service as a result of an audit of the Partnership by the Service shall determine the allocation of the Credit to the Limited Partner is less than 98% of the amount of the aggregate Credit for the Compliance Period, then the amount of the reduction of Credit allocable to the Limited Partner as a result of reduction in the allocation of the Credit to the Limited Partner shall be deemed for purposes of this Agreement to effect a proportionate reduction in the amount of the Credit which the Partnership claims for purposes of subsection (a) above. Notwithstanding the foregoing, the provisions of Article III(3)(g) shall not apply in the event that any reduction in the Credit allocable to the Limited Partner results from a determination by the Service that the Limited Partner in any year is entitled to less than 98% of the losses and credits of the Partnership as a consequence of the operation of the provisions of Article III(2)(e) after default by the Limited Partner.

(h) In the event that the amount of an Additional Installment is reduced for any taxable year by reason of Article III(3)(a), the General Partner shall advance to the Partnership, in addition to any Credit Adjuster Advance required by Article III(3)(a) or (b), a Credit Adjuster Advance equal to the lesser of (i) the amount of such reduction of the Additional Installment payable during such taxable year or (ii) the amount of the Development Fee payable during such taxable year. The amount of any Credit Adjuster Advance by reason of this Article III(3)(h) shall be advanced to the Partnership prior to the due date of the Development Fee payment for such taxable year and shall be used by the Partnership to pay the amount of the Development Fee for such taxable year.

(i) If as of the date that any installment of the Development Fee is due (i) there is a continuing deferral of an Additional Installment Due Date pursuant to Article III(3)(a) or (ii) the Limited Partner has deposited any Additional Installment in an escrow account pursuant to Article III(3)(a) or (iii) all or any portion of an Additional Installment of the Limited Partner's Capital Contribution is held in a Segregated Account by reason of Article III(3)(b), the General Partner shall advance to the Partnership, in addition to any Credit Adjuster Advances required by Article III(3)(a) or (b), a Credit Adjuster Advance equal to the lesser of (X) so much of any such Additional Installment as is deferred, held in an escrow account, or held in a Segregated Account as of the required date of advance of such Credit Adjuster Advance for any taxable year (as prescribed in the sentence immediately following), or (Y) the amount of the Development Fee payable during the taxable year reduced by any Credit Adjuster Advance made pursuant to Article III(3)(h) for such year. The





of any Credit Adjuster Advance made by reason of this Article III(3)(i) shall be advanced to the Partnership prior to the date of the Development Fee payment for such taxable year; shall be used by the Partnership to pay the amount of the Development Fee for such taxable year. As soon as any Additional Installment, or such portion of any Additional Installment held in an escrow account or Segregated Account has been contributed or released (as the case may be) to the Partnership, there shall be specially distributed to the General Partner from the proceeds of such Additional Installment contributed or released, as the case may be, (neither to reduce nor to be limited by Net Rental Cash) an amount equal to the amount of all unrepaid Credit Adjuster Advances made pursuant to this Article III(3)(i).

(j) Any other provision of this Agreement to the contrary notwithstanding, the Development Fee payable pursuant to the Development Agreement shall be subject to increase, reduction in the event of, and by the amount of, any increase or reduction determined prior to Completion in the amount of the Limited Partner's Capital Contribution as a consequence of the application of Article III(3). If an increase or reduction in payments of the Development Fee has occurred as a result of the operation of this Article III(3)(j), the Partnership General Partner and the Developer shall revise the terms of the Development Agreement and the Development Note (both retroactively and prospectively) prior to Completion so as to appropriately increase or reduce the total payments to be made thereunder, and to recharacterize and recalculate the principal and interest components of payments made under the above Development Note.

4. No Interest on Capital Contributions. No interest shall accrue or be payable to any Partner by reason of its Capital Contribution or its Capital Account.

5. No Right to Require Repayment of Capital. A Partner shall not have the right to withdraw from the Partnership or any part of its Capital Contribution. No Partner shall have any right to demand and receive property of the Partnership in return for its Capital Contribution or in respect of its interest, except as provided in this Agreement.

6. Deficit Restoration. If, upon liquidation of the General Partner's interest (whether or not in connection with the liquidation of the Partnership), the General Partner has a negative balance in its Capital Account, then such General Partner shall be required to contribute to the capital of the Partnership, immediately prior to the liquidation of such General Partner's interest, the lesser of (i) the negative balance in its Capital Account, or (ii) 1.01% of the aggregate Capital Contributions made by the Limited Partner. Such contribution shall be a receipt of the Partnership available



for payment of operating expenses of the Partnership or distribution to the Partners, in accordance with the terms of this Agreement. If, upon liquidation of a Limited Partner's interest (whether or not in connection with the liquidation of the Partnership), such Limited Partner has a negative balance in its Capital Account, such Limited Partner shall be required to contribute to the capital of the Partnership, immediately prior to such liquidation, an amount equal to the lesser of the negative balance in its Capital Account, or (ii) \$3

7. No Third-Party Beneficiary. None of the provisions of this Agreement shall be construed as existing for the benefit of any creditor of the Partnership or for the benefit of any creditor of any of the Partners, and no provision shall be enforceable by a party not a signatory to this Agreement.

#### ARTICLE IV

##### Right to Mortgage; General Partner Bound by Loan Documents; MHFA Provisions

1. Right to Mortgage. The Partnership shall be authorized to borrow from the Mortgagees whatever amounts may be required, subject to the provisions hereof, in connection with the acquisition, development and construction of the Partnership Property and the Project and to meet the expenses of operating the Project (including, without limitation, any items for which the Mortgagees may provide mortgage funds) and to secure the same by the mortgages; provided, however, that the mortgages and mortgage notes shall provide that no Partner or Affiliate related to a Partner within the meaning of Treasury Regulation Section 1.752-1T shall have any personal liability for the payment of all or any part of such mortgage notes (except to the extent that the General Partner may have liability for debt under the terms of the Development Fund Agreement under the amounts of any escrows or the Letters of Credit furnished to MHFA thereunder), and under no circumstances will the Limited Partner ever be personally liable. Notwithstanding the foregoing, but subject to the limitations set forth in this Agreement, the Partnership is authorized to borrow for Partnership purposes (and for purposes hereof it is acknowledged that any Development Advances, Credit Adjustments, Operating Deficit Contributions or Condominium Contributions are intended to represent Capital Contributions rather than borrowings) such amounts as may be needed by the Partnership from time to time for Partnership purposes (including the General Partner or the Developer, provided that, based on the advice of Counsel, the Accountants, and the Reviewing Accountants, such borrowing would not adversely impact the allocations of depreciation and Credit to the Limited Partners) at any time during the Credit Period (as defined in Code Section 42(f)(1)), and/or (ii) from third parties, and to



such loans in accordance with their terms. Any such borrowing(s) may be on an unsecured basis or, if (and to extent that) the borrowing relates to the Rental Project borrowing may be collateralized by a pledge of the unpaid Installments of Capital Contributions; provided, however (i) the Partnership shall not execute and deliver any instrument to the Developer pledging the unpaid Installments of Capital Contributions for the purpose of securing payment of the Development Fee, and (ii) any instrument purporting to pledge the unpaid Installments of Capital Contributions to the Partnership in accordance with this Article IV(1) (and a subsequent pledge of the unpaid Installments of Capital Contributions by the initial pledgee of said unpaid Installments) shall in all cases contain the language set forth in Exhibit D attached hereto.

2. General Partner(s) Bound by Loan Documents. The General Partner shall be bound by the terms of the Loan Documents and the Project Documents. Any incoming General Partner shall as a condition of receiving any Interest be bound by the Loan Documents and the Project Documents on the same extent and on the same terms as the other General Partners. Upon any dissolution of the Partnership or a transfer of the Partnership Property while the MHFA Rent Mortgage is held by MHFA, the BRA Rental Mortgage is held by the BRA, and/or the HoDAG Mortgage is held by the City, title or right to the possession and control of the Rental Project, and no right to collect the rents from the Rental Units and the commercial space and parking facilities in as part of the Rental Project, shall pass to any Person not, or does not become, bound in a manner satisfactory to the Mortgagees to the Loan Documents, the Project Documents provisions of this Agreement.

3. MHFA Provisions.

(a) As a condition to the admission to the Partnership of any and all additional or Substitute Limited Partners hereunder, the General Partner shall require such additional or substitute Limited Partners to agree to be bound by the provisions of this Agreement, including acknowledgment of all Partnership obligations to MHFA, EOCB, the BRA, the City, HUD and other parties in connection with the Project Documents.

(b) The hiring of a Management Agent under Article II(7)(h) shall be subject to MHFA approval. As herein, the term Management Fee shall mean the amount paid from time to time by the Partnership to the Management Agent on an annual basis for management services in accordance with the management contract approved by MHFA.

(c) Notwithstanding any other provision of this Agreement, in no event shall a General Partner have the right voluntarily to withdraw from the Partnership prior to Completion. After Completion, any General Partner may,



to the provisions of Article IX of this Agreement, voluntarily withdraw from the Partnership, provided that, after such withdrawal, there remains a General Partner or General Partner who, in the reasonable opinion of MHFA, are capable and competent to cause the Partnership to effectively own and operate the Project.

(d) As a condition to any Assignee becoming a substitute or additional Limited Partner pursuant to Article IX hereof, he shall agree to be bound by the provisions of the Agreement (including an acknowledgment of all Partnership obligations to MHFA, to EOCD, to the BRA, to the City and other parties in connection with the Project Documents and operation of the Project), he shall make the representations and warranties contained herein, if any, and he shall execute and deliver to the General Partner such other documents as the General Partner may reasonably request.

(e) As a condition to the admission to the Partnership of any and all additional or substitute General Partners, pursuant to Article IX, each such substitute shall agree to be bound by the provisions of this Agreement, including an acknowledgment of all Partnership obligations to MHFA and EOCD in connection with the Project Documents and operation of the Project. Upon such admission, any such additional General Partners shall be vested with the full rights and authority of a General Partner herein.

(f) Notwithstanding Article XIV(1), amendments to this Agreement which would affect MHFA's rights under the Article IV(3) or under any of the Loan Documents shall not be made without MHFA's prior written consent.

## ARTICLE V

### Rights, Powers and Obligations of the General Partner

#### 1. Authority of General Partner.

(a) Subject to applicable Regulations, the Project Documents, the Loan Documents and the terms and provisions of this Agreement (including, without limitation, all limitations on rights and powers set forth herein), the Partnership and each General Partner shall have all powers necessary, convenient and appropriate to carry out the purposes and business of the Partnership referred to in Article II(6), including without limitation the right, power, and authority to (i) execute, deliver on behalf of the Partnership any contract, agreement or other instrument or document required or otherwise appropriate to acquire, construct, improve, lease, operate, maintain, submit to a condominium regime, sell, encumber,





mortgage, assign, or convey the Partnership Property (or part thereof); (ii) prepay in whole or in part, refinance, recast, increase, modify or extend the Mortgages or any mortgages affecting the Partnership Property and in connection therewith to execute any extensions, renewals, or modifications of the Mortgages or any such other mortgages on the Partnership Property; (iii) convey the Partnership Property (or any part thereof) by deed, mortgage, certificate, bill of sale, agreement, or otherwise, as appropriate; (iv) borrow, issue evidences of indebtedness in furtherance of any or the purposes of the Partnership, and to secure the same Mortgages on the Partnership Property or the pledge of any other assets of the Partnership; (v) bring, compromise, and defend actions at law or in equity; and (vi) establish contingency reserves and to set aside such Partnership funds therefor as the General Partner determines to be reasonable in connection with the operation of the Partnership business; (vii) enter into, perform and carry out, contracts of an including contracts with Affiliates of a Partner, necessary in connection with or incidental to, the accomplishment of purposes of the Partnership, specifically including, but not limited to, the execution and delivery of the Project Documents, and all other agreements, certificates, instruments or documents required by the Lenders in connection with the Loan Documents and the acquisition, construction, development, improvement, maintenance and operation of the Property; (viii) employ any Person, including an Affiliate, to perform services for, or to sell goods to, the Partnership (including without limitation, management services) and to pay for such goods or services; provided that (except with respect to any contracts specifically referenced in this Agreement) the terms of such transaction with an Affiliate shall not be less favorable to the Partnership than would be arrived at by unaffiliated parties dealing at arms' length; and (ix) enter into any contract of activity and to perform and carry out contracts of any kind necessary to, or in connection with, or incidental to, the accomplishment of the purposes of the Partnership, so long as said activities and contracts may be lawfully carried out and performed by a partnership under the laws of the State. In respect to issues not covered by this Agreement, the Act shall govern.

(b) Except for items for which a vote or consent of the Limited Partner is required, all decisions made for or on behalf of the Partnership by the General Partner shall be binding upon the Partnership. Except as expressly otherwise set forth in this Agreement, the General Partner (acting alone and on behalf of and in the name of the Partnership), in connection with and not in limitation of the rights and powers granted to it by law or by the other provisions of this Agreement, shall, in its sole discretion, have the full and entire right, power and authority, in the management of the Partnership's business, to do any and all acts and things necessary, proper, or otherwise customary or advisable to effectuate the purposes of the



Partnership. In furtherance and not in limitation of the foregoing provisions of this Article V and of the other provisions of this Agreement, the General Partner is, as is more fully set forth in Article V(1)(a) above, specifically authorized and empowered to execute any and all instruments documents as shall be required by any lender in connection any loan or loans, including but not limited to executing t Mortgages, Mortgage Notes, any contract, building loan agreement, bank resolution and signature card, release, discharge, or any other document or instrument in any way related thereto or necessary or appropriate in connection therewith, all of which must be in accordance with this Agreement.

2. Limitations on the Authority of the General Partner  
Notwithstanding any other provision of this Agreement, the General Partner shall have no authority (i) to perform any in violation of any applicable law and regulations, the Loan Documents, or the Project Documents; (ii) to do any act required to be approved, consented to, voted on, or ratified by the Limited Partner under the Act or under this Agreement unless such approval, vote, consent, or ratification has been obtained; (iii) to cause the Partnership to engage in any business other than as set forth in Article II(6); or (iv) do any act which would make it impossible to carry out the business of the Partnership as contemplated herein. [The General Partner shall have no authority to engage in the following activities without the prior written consent of the Limited Partner and, if required under the Loan Documents, Regulations or this Agreement, the consent of any or all of the Mortgages:

(a) Prior to the twentieth anniversary of Completion effect a sale of all or any portion of the Rental Project or the Rental Units (other than pursuant to the Option Agreement).

(b) Prior to the twentieth anniversary of Completion effect a refinancing, encumbrance, mortgage (other than the initial Mortgages securing the MHFA, BRA and HoDAG Loans, and the conversion of certain of such initial Mortgages to the 1 and BRA Condominium and Rental Mortgages), conveyance, or other disposition of all or a substantial portion of the Rental Project or the Rental Units; provided, however, that the General Partner shall be authorized to increase the principal amount of the MHFA Rental Loan and/or SHARP Loan without the consent of any other Partner if such increase (i) occurs prior to thirty-six months following Completion, (ii) does not exceed twenty percent (20%) of the original principal amount of the MHFA Rental Loan or the SHARP Loan as the case may be, (iii) does not give rise to or create a recourse obligation of the Partnership or the Partners or a Partner Nonrecourse Debt (other than any corresponding increase in the Letters of Credit), (iv) does not otherwise result in a modification



to the applicable Loan Documents, or in the addition of provisions in any documents or instruments delivered in substitution therefor, which materially adversely affect the Partnership and/or the Limited Partner, and (v) based on advice of Counsel, the Accountants, and the Reviewing Accountants, such increase would not adversely impact the allocations of depreciation and Credit to the Limited Partner at any time during the Credit Period (as defined in Code Section 42(f)(1));

(c) Lease as an entirety the Rental Project, any portion of the Rental Project (other than the Master of the commercial space and parking spaces included as part of the Rental Project) except in the ordinary course of business of the Partnership;

(d) Lease as an entirety the Condominium Project, lease any Condominium Unit while such Condominium Unit is owned by the Partnership;

(e) Become (or cause or permit any Affiliate to become) personally liable on, or in respect of, or guarantee the Mortgage Notes, the Mortgages, or any of the Loan Documents, except to the extent that the General Partner has liability for such debt under the terms of the Development Fund Agreement up to the amounts of any escrows or the amount of Credit required to be furnished to MHFA thereunder;

(f) Following Completion in accordance with the Construction Contract, (i) construct any new capital improvements (other than the Townhouses and improvements associated therewith) or replace any existing capital improvements with respect to the Condominium Project using funds of the Partnership, or (ii) construct any new capital improvements or replace any existing capital improvement with respect to the Rental Project or the Rental Units at a cost in excess of \$100,000 in a single Partnership Fiscal Year, exclusive of (a) replacements, remodeling and renovation in the ordinary course of business, including without limitation tenant improvements to the Rental Units and the commercial space, (b) construction to replace losses which is substantially paid for or anticipated to be reimbursed from insurance proceeds, or (c) replacements, remodeling and renovations required by any Mortgagee or any governmental regulatory agency having jurisdiction over the Project;

(g) Acquire by purchase, lease or otherwise any real property in addition to the Partnership Property (other than easements or similar rights necessary or convenient for the operation of the Project);

(h) During the Compliance Period, lease or otherwise operate any Rental Unit or the Rental Project in such a manner that such Rental Unit or the Rental Project would fail to



treated as a "low income unit" under Section 42(i)(3) of the Code, or as a qualified low-income housing project under Section 42(g)(1)(A) of the Code, as the case may be;

(i) Borrow or incur debt (i) outside of the ordinary course of business, or (ii) in the ordinary course of business in excess of \$100,000 in the aggregate at any one time outstanding on the general credit of the Partnership, for indebtedness incurred in accordance with the terms to the General Partner and the Developer represented by Voluntary Advances and Condominium Contributions, and excluding, for purposes hereof, the obligations of the Partnership in respect of Development Advances, Operating Deficit Contributions and the Development Fee;

(j) Voluntarily file a bankruptcy petition on behalf of the Partnership;

(k) Prepay the Mortgage Notes (except for any prepayments of principal or interest required to be made pursuant to the terms thereof);

(l) confess a judgment against the Partnership in excess of \$10,000.00, other than a judgment the amount of which is covered in its entirety (excepting deductible sums in excess of \$10,000) by the proceeds of any insurance policy maintained by the Partnership;

(m) Dissolve or wind up the Partnership;

(n) Modify or amend this Agreement, except in accordance with Article XIV(1); or

(o) Change the nature of the Partnership's business.

### 3. Overall Management of Business; Managing General Partner.

(a) The General Partner shall have full and exclusive power and right to manage and control the business and affairs of the Partnership. Any action required or permitted to be taken by a General Partner that is a corporation or partnership hereunder may be taken by such of its proper officers, directors or general partners, as the case may be, as it shall vote to designate and duly authorize for such purpose. In the event that at any time there is more than one General Partner in the Partnership, the powers and duties of the General Partner hereunder may be exercised in the first instance by one Managing General Partner who, subject to the terms and provisions of this Agreement, shall manage the business and affairs of the Partnership. Such Managing General Partner shall be (and hereby is) authorized to execute and deliver on the name and on behalf of the Partnership all such documents





papers (including any required by the Mortgagees, or any other governmental authority having jurisdiction over the Partnership or the Partnership Property) required in connection with the business of the Partnership, subject to the terms of this Agreement. If such Managing General Partner shall be unable to serve in the capacity of Managing General Partner, the remaining General Partners (if there are more than one) may, from time to time designate from among themselves by consent one or more substitute or additional Managing General Partners. If for reason no designation is in effect, the powers of the Managing General Partner shall be exercised by the majority consent of the remaining General Partners.

(b) The General Partner may delegate its authority, power, and right to manage the Partnership Property to the Management Agent; provided, however, that any such delegation shall not relieve the General Partner of its obligations and responsibilities for the proper management of the Partnership Property.

(c) The General Partner shall prepare or cause to be prepared all tax and information returns required of the Partnership or considered necessary by the General Partner (including, but not limited to, federal, state, and local income tax and information returns and any amended returns), which returns shall be reviewed in advance by the Accountants. The General Partner shall, after consultation with the Limited Partner, be responsible for making all elections required or allowed under the Code or the Treasury Regulations including, but not limited to, elections pursuant to Sections 168, 709, and 754 of the Code, and all elections required or allowed under State or local law. To the extent possible, no election shall be made which would create a benefit to the General Partner and a detriment to the Limited Partner.

4. Duty of the General Partner to Maintain the Low Income Housing Status of the Partnership Property.

(a) During the Compliance Period, the General Partner shall hold for occupancy the Rental Units in accordance with the requirements of the Loan Documents and the Regulations and the General Partner shall hold for occupancy not less than 20% of the Rental Units as Designated Low-Income Rental Units and one hundred percent (100%) of the Rental Project in such a manner as to qualify each of the Designated Low-Income Rental Units and the Rental Project as "low income housing" under Section 1250(a)(1)(B)(ii) of the Code, and as a "low income unit" under Section 42(1)(3) of the Code, or as a "qualified low income housing project" under Section 42(g)(1)(A) of the Code, as such sections of the Code are interpreted from time to time in Treasury Regulations and rulings promulgated thereunder. The General Partner shall not, by act or omission,



permit any act to be taken which would cause the termination or discontinuance of the qualification of the Designated Low-Income Rental Units and the Rental Project as "low-income housing" under Section 1250(a)(1)(B)(ii) of the Code or "low income unit" under Section 42(i)(3) of the Code, or "qualified low-income housing project" under Section 42(g)(1)(A).

(b) During the Compliance Period, the General Partner shall prepare and submit to the Secretary of the Treasury or any other governmental authority designated for such purpose on a timely basis, any and all annual reports, information, returns, and other certifications and information and statements to the extent of available Partnership funds (including with limitation Development Advances and Operating Deficit Contributions, and also including the proceeds of any Venture Advances made by the General Partner in its sole discretion) take any and all other necessary and appropriate action required (i) to cause the Partnership to continue to qualify for the Credit for each of the Rental Units and the Rental Project, and (ii) to avoid recapture or reduction of the credit or the imposition of penalties or interest on the Partnership or any of the Partners for failure to comply with Section 42 of the Code.

5. Outside Activities. The General Partner shall be responsible for the management of the business of the Partnership so long as it deems reasonably necessary for the efficient operation of the Partnership Property, the Project, and the Rental Units and in order to comply with this Agreement. The General Partner may engage in and possess any interest in other business ventures (including limited partnerships) of every kind, nature and description whatsoever, independently of the Partnership, whether existing at the date hereof or hereafter, including, without limitation, developing adjacent parcel(s) to the Partnership Property, and acting as a general partner or limited partner of other partnerships or limited partnerships, directly or through interests in other partnerships or limited partnerships, housing projects similar to, or in competition with, the Rental Units and the Rental Project. Neither the Partnership nor any of the Partners shall have any rights by virtue of this Agreement in or to such business ventures or to the income or profits derived therefrom, and nothing shall be construed to render them partners in such business venture.

6. Liability to Partnership and Limited Partners. The General Partner shall not be liable, responsible, or accountable in damages or otherwise to the Limited Partners or the Partnership for any acts performed in good faith within the scope of authority of the General Partner pursuant to this Agreement; provided, however, that the General Partner shall be liable for its actions and/or omissions to the extent they are attributable to gross negligence, fraud, willful



misconduct, malfeasance, breach of any representation and warranty set forth in Article V(10), breach of any covenant set forth in Article V(11), breach of any agreement set forth herein, breach of its fiduciary duty, or for actions performed outside the scope of its authority hereunder.

7. Indemnification of General Partner.

(a) The Partnership shall indemnify, defend, and hold harmless the General Partner from and against any loss, liability, damage, cost, or expense (including reasonable attorneys' fees) arising out of or alleged to arise out of demands, claims, suits, actions, or proceedings against the General Partner, by reason of any act or omission performed by it (including its employees and agents) while acting in good faith on behalf of the Partnership and within the scope of authority of the General Partner pursuant to this Agreement and any amount expended in any settlement of any such claim, liability, loss, or damage; provided, however, that: (i) the General Partner in good faith believed that such action or inaction giving rise to liability, loss or damage of the Partnership was in the best interests of the Partnership and such course of action or inaction did not constitute gross negligence, fraud, willful misconduct, malfeasance, material breach of any representation, warranty, covenant or agreement set forth in this Agreement, or breach of a fiduciary duty; (ii) any such indemnification shall be recoverable from the assets of the Partnership, not from the assets of the General Partner, and no Partner shall be personally liable therefor. This indemnity shall be operative only in the context of third-party suits, and not in connection with demands, claims, suits, actions or proceedings initiated by any Partner or the Partnership, or any Affiliate thereof against another Partner or the Partnership.

(b) The Partnership shall not pay for that portion of any general liability insurance, or any separate insurance policy, covering liability of the General Partner for actions or omissions for which indemnification is not permitted hereunder.

(c) Notwithstanding anything contained in this Agreement, Article V(7), the General Partner shall not be indemnified or saved harmless from any liability, loss, damage, cost, or expense incurred by it in connection with: (i) any liability imposed by law upon the Partnership or the General Partner for the General Partner's violation of any law as a result of negligence or misconduct; (ii) any claim or settlement involving the allegation that federal or state securities laws were violated by the General Partner or the Partnership; (iii) any claim involving any category of claims listed in Article V(7)(a)(i), unless (A) the General Partner is successful in defending such action on the merits; (B) the



claims have been dismissed in favor of the General Partner, prejudice on the merits by a court of competent jurisdiction, or (C) a court of competent jurisdiction approves a settlement and either such settlement provides for the payment of costs to the General Partner, or such court determines that the General Partner is entitled to costs.

(d) The provision of advances from the Partnership to the General Partner for reasonable legal expenses and other costs as a result of a legal action pursuant to Article V(7) is permissible only if the following three conditions are satisfied: (1) the legal action relates to the performance of the duties or services by the General Partner on behalf of the Partnership; (2) the legal action is initiated by a third party who is not a Partner of the Partnership or Affiliate thereof; and (3) the General Partner covenants in advance to repay the advance of funds to the Partnership in accordance with Article V(7)(e) in the event it is determined that the General Partner is not entitled to indemnification hereunder.

(e) The General Partner, when entitled to indemnification pursuant to this Article V(7), shall be entitled to receive, upon application therefor, reasonable advances to cover the costs of defending any proceedings against it; provided, however, that such advances shall be repaid to the Partnership, with interest thereon, at an annual rate equal to the rate of interest quoted from time to time by the First National Bank of Boston as its corporate base rate interest from the date made until repaid, if the General Partner is determined not to be entitled to indemnification under this Article V(7). All rights of the General Partner to indemnification shall survive the dissolution of the Partnership and the death, retirement, incompetency, insolvency, bankruptcy, or withdrawal of the General Partner.

(f) The indemnification rights contained in this Article V(7) shall be limited to (i) out-of-pocket loss or expense, including without limitation such costs and expenses provided for in Article XIV(17); plus (ii) interest on all amounts payable to the indemnified party under the preceding clause (i) at an annual rate equal to the rate of interest quoted from time to time by the First National Bank of Boston as its corporate base rate of interest until such amounts are paid to the indemnified party. Nothing contained herein shall constitute a waiver by the Limited Partner or its Affiliates of any right which it may have against any party under federal, state, or common law principles.

#### 8. Indemnification of Partnership and Limited Partner.

(a) The General Partner shall defend, indemnify, and save harmless the Partnership and each Partner from any loss, liability, damage, cost, or expense (including reasonable





attorneys' fees) incurred by reason of any demands, claims, actions, or proceedings arising out of the General Partner's gross negligence, fraud, willful misconduct, malfeasance, breach of any representation and warranty set forth in Article V(10), breach of any covenant set forth in Article V(11), breach of any agreement set forth herein, of its fiduciary duty, or for actions performed outside scope of its authority hereunder.

(b) The General Partner shall defend, indemnify and hold harmless (i) the Limited Partner from any liability incurred by it for Partnership obligations (including, without limitation, the Mortgage Notes) in excess of its Capital Contributions, except to the extent that there is a Final Determination that the Limited Partner has taken any act exercised any rights with respect to the operation of the Partnership in excess of those actions and rights granted by this Agreement or the Act (other than any such Final Determination premised on actions taken by the Limited Partner after the removal of the General Partner, or incident to causing such removal, in accordance with Article IX(2) of the Partnership Agreement (including the Partnership's removal of a successor General Partner); and (ii) the Partnership and the Limited Partner from any claim, damage, liability, loss, or expense (including reasonable attorneys' fees) arising from any liability of the Limited Partner or the Partnership, to the extent not covered by insurance proceeds to the Partners with respect to any claim, suit, action or proceeding instituted or arising in connection with (A) the financing, construction, operation, maintenance, ownership, marketing, sale or other disposition of the Condominium Units or the Condominium Project (or any portion thereof), (B) any default, breach or violation of the terms of the MHFA Condominium Mortgage, the BRA Condominium Mortgage or any Loan Document executed in connection therewith, (C) any default in the repayment of the MHFA Condominium Loan and/or the BRA Condominium Loan, or (D) any breach of any agreement, instrument, or other document related to the financing (including present Loan Documents to the extent any such documents relate to the Condominium Project), construction, operation, maintenance, ownership, marketing, sale or other disposition of the Condominium Units or the Condominium Project (or any portion thereof).

(c) The foregoing indemnification provisions of Article V(8) shall be a recourse obligation of the General Partner, shall not be limited by the application of any provision of Article V(10) or (11) purporting to limit the liability of the General Partner, and shall survive the dissolution of the Partnership and/or the death, retirement, incompetency, insolvency, bankruptcy, or withdrawal of the General Partner.



# Environmental Indemnification.

(a) In the event that the Limited Partner becomes liable under any statute, regulation, ordinance or other provision of federal, state, or local law pertaining to the protection of the environment or otherwise pertaining to health or employee health and safety, including, without limitation, protection from hazardous waste, lead-based asbestos, methane gas, urea formaldehyde insulation, oil, substance, underground storage tanks, polychlorinated biphenyls (PCBs), and radon, the General Partner shall indemnify and hold the Limited Partner for any and all costs, expenses, damages, or liabilities incurred by the Limited Partner in connection with such costs, expenses, damages, or liabilities in whole or in part from any source. The foregoing indemnification shall not be construed to limit the obligation of the General Partner and shall survive the dissolution of the Partnership and/or the death, retirement, incompetency, insolvency, bankruptcy, or withdrawal of the General Partner. Notwithstanding the foregoing, the General Partner's recourse obligation to indemnify the Limited Partner pursuant to this Article V(9)(a) (i) shall not include any voluntary payments made by the Limited Partner that the Limited Partner is not legally obligated to make, based on the opinion of independent legal counsel satisfactory to the Limited Partner; (ii) shall not include any liability which the Limited Partner may incur if such liability is premised on a Final Determination by a court of competent jurisdiction that the Limited Partner has, as a result of its actions or course of conduct with respect to the business of the Partnership, acted beyond the scope of the rights afforded to it under the Agreement or the Act (other than any such Final Determination premised on actions taken by the Limited Partner incident to causing the removal of the General Partner, as provided in Article IX(2) and (3), and locating and admitting a qualified successor General Partner); and (iii) shall not include any liability which the Limited Partner may incur if such liability results from, or is caused by, the acts or omissions of any Partner of the Partnership subsequent to the retirement or withdrawal of the General Partner; provided that such retirement or withdrawal of the General Partner is in accordance with the provisions of Article IX(1), and provided further that, following such retirement or withdrawal, a successor General Partner satisfying Fannie Mae underwriting standards has been admitted as a General Partner of the Partnership and has undertaken the obligations of the General Partner set forth in this Article V(9)(a).

(b) In the event that:

(i) the Partnership becomes liable under any statute, regulation, ordinance or other provision of federal, state, or local law pertaining to the protection of the environment or otherwise pertaining to public health or



employee health and safety, including, without limitation, protection from hazardous waste, lead-based paint, asbestos, methane gas, urea formaldehyde insulation, oil, toxic substance, underground storage tanks, polychlorinated biphenyls (PCBs), and radon; and

(ii) such liability arises from the construction, operation, maintenance or ownership of the Condominium Unit or the Condominium Project (or any portion thereof),

then, to the extent that such liability relates to the Condominium Units or the Condominium Project (or any portion thereof), the General Partner shall indemnify and hold harmless the Partnership for any and all costs, expenses (including reasonable attorneys' fees), damages, or liabilities to the extent that the Partnership is required to discharge such costs, expenses, damages, or liabilities in whole or in part from any source. The foregoing indemnification shall be a recourse obligation of the General Partner and shall survive the dissolution of the Partnership and/or the death, retirement, incompetency, insolvency, bankruptcy, or withdrawal of the General Partner. Notwithstanding the foregoing, the General Partner's recourse obligation to indemnify the Partnership pursuant to this Article V(9)(b) shall not include any liability which the Partnership may incur if such liability results from, or is caused by, the acts or omissions of any Partner of the Partnership subsequent to the retirement or withdrawal of the General Partner; provided that such retirement or withdrawal of the General Partner is in accordance with the provisions of Article IX(1), and provided further that, following such retirement or withdrawal, a successor General Partner satisfying Fannie Mae underwriting standards has been admitted as a General Partner of the Partnership and has undertaken the obligations of the General Partner set forth in this Article V(9)(b).

10. Representations and Warranties of the General Partner. The General Partner hereby represents and warrants to the Limited Partner that the following are true and correct as of the date hereof and will be true and correct for the Term, unless specifically otherwise provided:

(a) The Partnership has obtained a reservation and allocation of Credit from MHFA in the annual amount of \$846,844 and (i) such reservation and allocation are in full force and effect, (ii) the Credit is available to the Partnership pursuant to Section 252(f)(2) of the Tax Reform Act of 1986, and (iii) the Project qualifies for calculation of the Credit in accordance with Section 252(f)(2)(E) of the Tax Reform Act of 1986.



(b) No litigation, action, investigation (except as may be expressly disclosed in the Environmental Report), or proceeding is pending or, to the best of its knowledge, threatened as of the date of this Agreement against the Partnership, the Partnership Property, the General Partner Robert M. Kargman or Arthur D. Ullian.

(c) No litigation, action, investigation, even proceeding is pending or, to the best of its knowledge, threatened which, if adversely resolved, would: (i) materially adversely affect the Partnership, the Partnership Property, the construction, ownership or operation of the Project or the Partnership; (ii) materially adversely affect the ability of the General Partner or any of its Affiliates, specifically including Robert M. Kargman and Arthur D. Ullian, to perform their obligations hereunder; (iii) materially adversely affect the financial condition of the General Partner, Robert M. Kargman and/or Arthur D. Ullian; or (iv) constitute or represent, if true, in a material breach of any representation, warranty, covenant, or agreement set forth herein.

(d) No default (or event which, with the giving of notice or the passage of time or both, would constitute a material default) has occurred and is continuing under any of the Loan Documents, the Project Documents, or any other contract, agreement, or instrument to which the Partnership is a party, subject, and the Loan Documents and the Project Documents are in full force and effect.

(e) All building, zoning, and other applicable certificates, permits, and licenses necessary to permit the construction, use, occupancy, and operation of the Partnership Property and the Project have been obtained (other than (i) building and other applicable certificates, permits and licenses necessary to commence construction of the Townhouse; (ii) certain permits required to be obtained by utility providers which are ordinarily obtained in the course of construction, and (iii) such certificates and permits as would be issued only after completion of the Project or any specific portion thereof) and neither the Partnership nor the General Partner has received any notice of or has any knowledge of any violation with respect to the Partnership Property of any rule, regulation, order, or decree of any governmental authority having jurisdiction which (x) it has failed to cure within the earlier of (1) 90 days after it has notice thereof (or such longer time as may be required to cure, provided the General Partner promptly commences and diligently prosecutes such cure), or (2) the period of time the governmental agency charged with the enforcement of such regulations, ordinances and laws, rules and regulations allows the General Partner to achieve compliance without asserting a violation or instituting an enforcement action against the Partnership; and (y) has





material adverse effect on the Partnership Property or Project or the construction, use, occupancy, or operation thereof.

(f) The execution and delivery of this Agreement all instruments pertaining thereto and the performance acts heretofore or hereafter made or taken pertaining to Partnership or the Partnership Property by the General Partner has been or will be duly authorized by all necessary consents or other action, and the consummation of any such transaction with or on behalf of the Partnership does not constitute breach or violation of, or a default under, the articles of incorporation or regulations or by-laws or other governing instruments of the General Partner or any agreement by which or any of its properties is bound, nor constitute a violation of any law, administrative regulation, or court decree.

(g) No Event of Bankruptcy has occurred and is continuing with respect to the Partnership, the General Partner or with respect to Robert M. Kargman or Arthur D. Ullian or their Affiliates).

(h) Except as set forth in Exhibit E hereto, as the date of this Agreement, there are no outstanding loan advances from the General Partner and/or its Affiliates, specifically including Robert M. Kargman and Arthur D. Ullian to the Partnership, and the Partnership has no unsatisfied obligation to make any payments of any kind to the General Partner and/or its Affiliates.

(i) No failure or refusal of any of the Mortgage Documents, the Mortgages, or the Mortgage Notes has occurred and is continuing.

(j) The Partnership owns good record and insurable title to the Partnership Property and the Project, free and clear of any liens, charges, or encumbrances other than the Mortgages, matters set forth in the Title Policy, and mechanics' or other liens which have been bonded against in such a manner as to preclude the holder of such lien from having any recourse to the Partnership Property, the Project or any of the Units, or the Partnership for payment of any debt secured thereby and the General Partner has received no notice of any such liens, charges, or encumbrances which it has failed to satisfy or otherwise cause to be removed within the earliest to occur of (1) 60 days following its receipt of notice thereof, or (2) the commencement of any proceedings or action to foreclose upon such lien, charge or encumbrance.

(k) The General Partner (i) is a limited partner, validly existing and in good standing under the laws of the Commonwealth of Massachusetts and (ii) has full power to en-



transactions contemplated herein and in the Loan Document the Project Documents to be performed by the General Partner does not and will not, result in any material breach or violation of, or default under, any agreements by which the General Partner is bound, or under any applicable law, administrative regulation, or court decree.

(l) All consents or approvals of any governmental authority, or any other person, necessary in connection with the transactions contemplated by this Agreement (other than such consents or approvals as may be issued (i) in connection with the construction of the Townhouses, or (ii) only after Completion of the Project or any specified portion thereof and all consents or approvals required to be obtained pursuant to the Loan Documents and the Project Documents in order to admit Fannie Mae to the Partnership as an Limited Partner have been obtained by the General Partner.

(m) All appropriate roadways and public utilities necessary to the operation of the Partnership Property, including, but not limited to, sanitary and storm sewers, water, gas (if applicable), and electricity are available on the public ways surrounding the Partnership Property and will be connected to the Partnership Property and each of the Rental Units and the Rental Project on or before the date of Completion of the Project.

(n) The Partnership is entitled to the benefit of all Loan Documents and the Project Documents and all other contracts and agreements which provide benefits for the owner of the Partnership Property, the Project, or the Partnership.

(o) No material default (or event which, with the giving of notice or the passage of time or both, will constitute a default) has occurred and is continuing under the Loan Documents or the Project Documents (or any other such contract, agreement, or instrument to which the Partnership is subject), and the same are in full force and effect.

(p) All Loan Documents and Project Documents are in accord with applicable laws, codes and regulations and the construction of the Project will be completed substantially and in all material respects in accordance therewith.

(q) Except as specifically referenced in the Environmental Report, to the best knowledge of the General Partner after diligent inquiry, including, without limitation, the preparation and provision of the Environmental Report in accordance with Article V(10)(s), the Partnership Property contains no substance, and on the date of Completion will contain no substance, known to be hazardous such as hazardous waste, lead-based paint, asbestos, methane gas, urea



oil, toxic substances, polychlorinated biphenyls (PCBs), and radioactive substances, or other pollutants that could be detrimental to the Partnership Property or the Project nor in violation of any local, state, or federal law or regulation, including the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, Safe Drinking Water Control Act, Comprehensive Environmental Response Compensation and Liability Act, or Occupational Safety and Health Act has occurred or is continuing; and the General Partner has not received any notification from any source whatsoever of the existence of any such hazardous condition on the Partnership Property or of a violation of any such local, state or, federal law or regulation with respect to the Partnership Property.

(r) No event has occurred which has caused, and the General Partner has not acted in any manner which will cause (i) the Partnership to be treated for federal income tax purposes as an association taxable as a corporation, (ii) the Partnership to fail to qualify as a limited partnership under the Act, or (iii) the Limited Partner to be liable for Partnership obligations, including, without limitation, the Mortgage Notes, in excess of its Capital Contribution.

(s) The General Partner has delivered to the Limited Partner the Environmental Report, which report has been approved and accepted by the Limited Partner.

(t) The Partnership is under no obligation under any federal or state law, rule, or regulation to register the interests or to comply with any exemption available for the sale of interests without registration.

(u) As of the date of this Agreement, the General Partner has delivered to the Limited Partner copies of all documents material to the Limited Partner's investment in the Partnership and copies of all amendments to such documents through the date hereof and, to the best of the General Partner's knowledge, all such copies are true and accurate.

Notwithstanding the provisions of Article V(6), Article V(8) or any other provision of this Agreement to the contrary, the General Partner shall not be personally liable to the Partnership, other than pursuant to the terms of, and to the extent of, its financial obligations set forth in Articles III(3), V(14)(b), V(15)(a) and (c), V(17) and V(18), or to the Limited Partner for any breach of the representations and warranties (i) set forth in Article V(10)(c), (d) or (e) to the extent that such breach arises after the date of this Agreement, or (ii) set forth in Article V(10)(j) (with respect



only to the imposition of liens and encumbrances) and Article V(10)(m) to the extent that such breach arises after the Additional Installment Due Date of the last Installment. Notwithstanding the preceding sentence, however, the General Partner shall be liable, without the benefit of the foregoing limitations, for any such breach attributable to its gross negligence, for any willful misconduct, malfeasance, breach of its fiduciary duty, or its acts beyond the scope of its authority hereunder, or any breach of any other representation or warranty set forth in this Article V(10) not specifically referenced in the preceding sentence.

11. Covenants of the General Partner. The General Partner covenants to the Limited Partner that for the Term:

(a) The General Partner shall at all times maintain sufficient economic substance sufficient to ensure that the Partnership will be classified for federal income tax purposes as a partnership and not as an association taxable as a corporation, and shall, in the exercise of its best efforts, take any and all actions as may be necessary and appropriate from time to time to maintain such net worth.

(b) The General Partner shall at all times during the Compliance Period hold for occupancy not less than 20% of Rental Units for rental to qualifying low-income tenants, charge such tenants rental rates no greater than permitted under Section 42 of the Code, and in all other respects comply with the provisions of Section 42 of the Code.

(c) The General Partner agrees that, except as provided in or contemplated by the Loan Documents, neither the General Partner nor any of its Affiliates will at any time become personally liable for payment of the Mortgage Notes except to the extent of the amounts represented by escrow arrangements or letters of credit required by MHFA pursuant to the terms of the Development Fund Agreement. The General Partner agrees that it will not cause the Limited Partner to become, and that it will take all steps within its power necessary to prevent the Limited Partner from becoming, personally liable for payment or performance under the Mortgage Notes or the Mortgage Documents, or any other Loan Documents, except as provided by law.

(d) The General Partner will cause the Partnership to maintain with financially sound insurers with an A.M. Best rating of A+V or better (i) comprehensive general liability insurance in a minimum amount of \$5,000,000 (or the maximum amount obtainable, if such amount of coverage cannot be obtained) for bodily injury and property damage for any single occurrence; and (ii) casualty insurance in an amount equal to the replacement value of the Partnership Property for proper





and covering such risks as is usually carried by such Partnership shall at all times comply with the insurance requirements imposed by the Mortgagees.

(e) The General Partner shall cause Completion Project to occur substantially in accordance with the planning, zoning, and other applicable certificates, permits, and licenses necessary to permit the construction, use, occupation and operation of the Project and the Units that are obtained only after Completion of the Project or a specified portion thereof.

(f) The General Partner shall furnish to the Limited Partner within ten business days of receipt thereof, a copy of any notice of default under the Mortgage Notes, the Mortgage or any of the other Loan Documents given to the Partnership by the Mortgagees.

(g) The General Partner will cause the Partnership Property, including each of the Units owned by the Partnership to be operated in compliance with all applicable zoning regulations, ordinances, and subdivision laws, rules, and regulations.

(h) The General Partner will not permit any Unit to be occupied other than pursuant to a written lease and will cause the Partnership to comply with all of the written terms and conditions of each of the residential lease agreements with respect to each of the Rental Units.

(i) The General Partner will cause the Partnership to keep all public utilities necessary to the operation of the Partnership Property, including, but not limited to, sanitary and storm sewers, water, gas (if applicable), and electricity, operating in working condition, to the extent required by law and pursuant to the residential lease agreements with respect to any of the Rental Units.

(j) The General Partner shall not act in any manner which will cause (i) the Partnership to be treated for federal income tax purposes as an association taxable as a corporation, (ii) the Partnership to fail to qualify as a limited partnership under the Act, or (iii) the Limited Partner to be liable for Partnership obligations, including, without limitation, the Mortgage Notes, in excess of its Capital Contribution.



(k) The General Partner shall take all actions required to comply with any applicable law, regulation or order of any regulatory agency or authority with jurisdiction over the Project, and/or (2) recommended in a report prepared by a qualified environmental engineer or consultant, after inspection of the Partnership Property, as necessary to the generation or continued presence of a material health hazard to persons on or about the Partnership Property, to ensure the Partnership Property contains no substance known to be hazardous such as hazardous waste, lead-based paint, asbestos, methane gas, urea formaldehyde insulation, oil, toxic substances, underground storage tanks, polychlorinated biphenyls (PCBs), and radon, and to ensure that the Partnership Property is not affected by the presence of oil, toxic substances, or other pollutants that could be a detriment to the Partnership Property or the Project and to ensure that the Partnership Property is not in violation of any local, state or federal law or regulation and is not in violation of the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substance Control Act, Safe Drinking Water Act, Comprehensive Environmental Response, Compensation and Liability Act, or Occupational Safety and Health Act, the General Partner shall promptly deliver to the Limited Partner any notice received from any source whatsoever of the existence of any such hazardous condition on the Partnership Property or of a violation of any such local, state, or federal law or regulation with respect to the Partnership Property.

(l) The General Partner shall take all actions necessary or required to maintain the Partnership in good standing in the Commonwealth of Massachusetts, including, without limitation, the making of all necessary filings.

(m) The General Partner shall furnish to the Limited Partner within ten business days of receipt thereof, a copy of any notice of any threatened or pending litigation, action, proceeding or investigation against the Partnership.

(n) The General Partner shall not employ any person as an employee of the Partnership.

(o) The General Partner shall use funds of the Partnership attributable to Capital Contributions or Credit Adjuster Advances made pursuant to Article III(3)(h) or (i) prior to any other Partnership funds to pay the Development Fee. Nothing in this Article V(11)(o) is intended to affect the obligation of the General Partner to make such Credit Adjuster Advances.

(p) The General Partner shall take all actions necessary in order to timely obtain MHFA approval of occupancy of the Rental Units, to achieve final closing of the MHFA Mortgage Loan, and to accomplish, in accordance with the



hereof, the timely conversion of (i) the MHFA Mortgage to the MHFA Condominium Mortgage and MHFA Rental Mortgage, and (ii) the BRA Mortgage to the BRA Condominium Mortgage and BRA Rental Mortgage, each in accordance with the terms and conditions set forth in Article III(2)(c)(xiv).

(q) The General Partner shall use its best efforts to cause the HoDAG Loan Documents to be executed and delivered by all parties thereto prior to Completion.

Notwithstanding the provisions of Article V(6), Article V(8) or any other provision of this Agreement to the contrary, the General Partner shall not be personally liable to the Partnership, other than pursuant to the terms of, and to the extent of, its financial obligations set forth in Articles III(3), V(14), V(15)(a) and (c), V(17) and V(18), or to the Limited Partner for any breach of the covenant set forth in Article V(11)(i) to the extent that such breach arises after the Additional Installment Due Date of the last Installment of the Limited Partner's Capital Contribution. Notwithstanding the preceding sentence, however, the General Partner shall be liable, without the benefit of the foregoing limitations, for any such breach attributable to its gross negligence, fraud, willful misconduct, malfeasance, breach of its fiduciary duty, its acts outside the scope of its authority hereunder, or for any breach of any other covenant set forth in this Article V(11) not specifically referenced in the preceding sentence.

12. Use of Fannie Mae Name. The General Partner shall at all times when it communicates regarding the composition of the Partnership state that Fannie Mae serves only as a limited partner and has limited liability as a matter of law. If any contracts entered into by the Partnership after the date of this Agreement involve, or are reasonably expected to involve, the expenditure of over \$50,000 in the aggregate, such contracts shall contain a clause specifying that the contracting party knows that Fannie Mae serves only as a limited partner and is not responsible for the debts of the Partnership, and that the contracting party covenants not to sue Fannie Mae for payment of any claims or amounts due under or arising out of the contract.

13. No Salary. The General Partner shall not be entitled to receive any compensation from the Partnership except as may be specifically provided herein, or in any Agreement specifically referenced herein, and the General Partner shall not be entitled to any salary in connection with its performance of its duties as General Partner.

14. Obligation to Complete Construction.

(a) The General Partner shall complete the construction of the Partnership Property or cause the same to be completed in a good and workmanlike manner, free and clear



of all mechanics, materialmen's, or similar liens, and equip the Partnership Property or cause the same to be with all necessary and appropriate fixtures, equipment articles of personal property, including refrigerators ranges, all in accordance with the Loan Documents, as t may be amended in accordance herewith, and substantially accordance with the plans and specifications, as the sa be amended, and shall provide for, or cause to be provid all other actions and performance required to complete t Project and arrive at final endorsement in conformity w: MHFA Loan Documents.

(b) In the event that the Designated Proceeds be insufficient to cause the Partnership to (i) cause Completion substantially in accordance with the Project Documents and the Loan Documents and discharge all fees, payments and expenses associated therewith, (ii) discharge Partnership liabilities and obligations arising out of ar casualty giving rise to insurance proceeds, and (iii) pay Operating Expenses of the Project until the date of Compl the General Partner shall make advances from time to time additional funds required to accomplish the foregoing ("Development Advances"). Development Advances shall not interest and may be reimbursed only from Designated Proce which were previously unavailable for direct payment of s expenditures; any balance of Development Advances not so reimbursed shall be repayable without interest and only as provided in Article VIII. For purposes of the foregoing, distribution of Refinancing Proceeds to the General Partne excess of its Net Invested Capital pursuant to Article VIII(2)(c) shall reduce the outstanding balance of any Development Advances made by the General Partner. Develop Advances shall not constitute an increase in the Net Inves Capital of the General Partner nor affect its Interest or Partnership Percentage.

(c) Development Advances shall be allocated among Rental Project and the Condominium Project as required by MHFA. The General Partner shall be deemed to have made Development Advances allocable to the Rental Project to the extent that MHFA draws down any amounts under the Letters of Credit (or such portion of the Letters of Credit) securing Completion of the Rental Project prior to the Cost Certification Date, or directly pays to MHFA or any other Person amounts in lieu of any such draws, which would constitute Development Advances allocable to the Rental Pro if advanced to the Partnership directly by the General Parti hereunder.

(d) As used herein, the term Designated Proceeds shall mean (a) the proceeds of the MHFA Loan, the HoDAG Loan and the BRA Loan (as the same may be increased or decreased from time to time through the third anniversary of Completio (b) subject to MHFA approval, Net Rental Cash Flow of the Project received prior to the date which is one year after t





...tion date (including any funds which would applied to fund MHFA required reserves or to amortization the MHFA Rental Loan but for MHFA's deferral of the fund: payment of such obligations), (c) up to \$4,626,965 of the Capital Contributions actually contributed to the Partner and (d) the proceeds of any insurance. Notwithstanding a provision of this Agreement to the contrary, the Developer shall be entitled to receive from the Partnership and MHFA-approved developer's overhead allowance payable from proceeds of the MHFA Mortgage Loan pursuant to the Develo Agreement.

(e) Notwithstanding any provision of this Agreement to the contrary, the General Partner shall have the right, any time prior to December 31, 1990, to discontinue the construction and development of the Project by reason of unforeseen and adverse circumstances, including without limitation unanticipated increases in costs associated with construction of the Rental Project (exceeding in the aggregate \$1,500,000 over the original construction budget), which circumstances are beyond the reasonable control of the General Partner and with respect to which the General Partner, after using its best efforts, determines in good faith that it would not be economically feasible to complete the construction and development of the Project. If the General Partner exercises such right, it shall offer to repurchase the Partnership Interest of the Limited Partner in accordance with the provisions of Article V(17) of this Agreement.

15. Operating Deficit Contributions; Condominium Contributions and Voluntary Advances.

(a) If, at any time or from time to time from and after the date of Completion of the Rental Project until the Additional Installment Due Date of the last Installment of the Limited Partner's Capital Contribution, an Operating Deficit exists with respect to the operations of the Rental Project, then the General Partner shall advance funds (an "Operating Deficit Contribution") to the Partnership in an amount equal to the amount of the Operating Deficit. Such obligation of the General Partner to advance funds to the Partnership shall be limited to \$600,000 in the aggregate at any one time outstanding; provided, however, that (i) if an Operating Deficit in excess of \$600,000 exists at the time of the Partnership's receipt of any Capital Contribution Installment and the Partnership's payment of any installment of the Development Fee from such Installment, then the General Partner shall be obligated to advance an Operating Deficit Contribution to fund such excess Operating Deficit up to an amount equal to the installment of the Development Fee paid from the proceeds of such Installment; and (ii) for so long as MHFA requires the Partnership to maintain certain Letters of Credit, the General Partner may be obligated under the MHFA Loan Documents to make



the then outstanding amounts of such Letters of Credit. Operating Deficit Contributions shall be repayable, without interest, solely as provided in Article VIII hereof. Operating Deficit Contributions shall not increase the Net Invested Capital of the General Partner nor affect its Interest or Partnership Percentage.

(b) The General Partner shall be deemed to have Operating Deficit Contributions with respect to the Rental Project to the extent that MHFA draws down under the Letter Credit (or such portion of the Letters of Credit) securing operations of the Rental Project after the Cost Certificate date, or directly pays to MHFA or any other Person amounts, in lieu of such draws, which would constitute Operating Deficit Contributions allocable to the Rental Project if advanced to the Partnership directly by the General Partner hereunder.

(c) The General Partner shall advance to the Partnership all or any portion of the funds necessary to cover interim operating expenses and carrying costs associated with the Condominium Project ("Condominium Contributions"). Any such Condominium Contributions made pursuant to this Article V(15)(c) shall be repaid, together with any borrowing costs incurred by the General Partner associated with furnishing funds to the Partnership, in accordance with the provisions of Article VIII and Article XII. In addition, the General Partner may, without obligation and in its sole discretion (subject only to the approval of any Mortgagees, if required), loan funds to the Partnership all or any portion of which may be necessary, in excess of its Operating Deficit Contribution obligations set forth in Article V(15)(a), to cover interim operating expenses and carrying costs associated with the Rental Project ("Voluntary Advances"); provided, however, that any such Voluntary Advances shall be made by the General Partner only in compliance with the terms and conditions set forth in Article IV(1). All Voluntary Advances made pursuant to this Article V(15)(c) (or deemed to be made pursuant to Article III(3)(c)) shall accrue interest at a rate equal to the prime lending rate announced from time to time by the Bank of New England, N.A. plus 2 percentage points.

16. Dealing with Affiliates. The General Partner may, for, in the name and on behalf of, the Partnership, enter into agreements or contracts for performance of services for the Partnership with a General Partner or an Affiliate thereof, including without limitation, the Placement Agreement with the Placement Agent, the Investor Services Agreement with the Investor Service Agent, the Development Agreement with the Developer, and the Incentive Management Agreement with the Management Agent, and may authorize the Management Agent to enter into such agreements and contracts, and the General Partner may obligate the Partnership to pay compensation for and on account of any such services and may authorize the



Management Agent to so obligate the Partnership; provided, however, such compensation and services shall be as authorized by the terms hereof or shall be at costs to the Partnership not in excess of those that would be incurred in making arm's-length purchases of comparable services on the open market. The compensation to be paid by the Partnership under the terms of the Placement Agreement, the Investor Services Agreement, the Development Agreement and the Incentive Management Agreement is hereby deemed by the parties hereto to comply with standards set forth in the immediately preceding sentence.

**17. Repurchase Obligation of General Partner.**

(a) The General Partner shall be obligated to offer to repurchase, on the terms and conditions hereinafter set forth in Article V(17)(b), the entire Interest of the Limited Partner if any of the following events shall occur ("Events of Repurchase"):

(i) prior to Completion of the Project, proceedings shall have commenced to foreclose on the Project because of the Partnership's default, and such action is not abandoned or discontinued within ninety (90) days after the receipt of notice of such action by the General Partner; or

(ii) prior to Completion of the Project the Partnership's title to the Project (or any portion thereof material to the operation of the Rental Units and Rental Project as contemplated herein) is divested for any other reason; or

(iii) Completion of the Project shall not have taken place on or before December 31, 1990; or

(iv) at any time prior to December 31, 1990, the General Partner shall elect to discontinue the rehabilitation, construction and development of the Project pursuant to Article V(14)(e); or

(v) prior to Completion of the Project, the SHARP Loan shall be annulled, terminated, withdrawn or defaulted, or if MHFA or EOCD shall fail, refuse or be unable to fund such loan; or

(vi) at any time prior to or upon Completion of the Project and the placement in service of the Units, the Credit allocation to the Partnership is terminated or, for any reason, the Credit is unavailable to or cannot be claimed by the Partnership with respect to the Project; or

(vii) prior to Completion, the Partnership has not entered into the HoDAG Loan Documents with the City; or



(viii) prior to the Additional Installment, the General Partner has failed to cause each of the conditions or requirements referenced in Article III(2)(c)(xiv) to have been satisfied.

(b) Upon the occurrence of any of the events specified in Article V(17)(a), the General Partner shall be obligated hereunder to, within ten (10) business days after receipt of notice of such event, give Notice to the Limited Partner of the occurrence of such event and of the General Partner's offer to purchase the Limited Partner's Interest. The Limited Partner may, by Notice to the General Partner, elect to require the General Partner to purchase the Limited Partner's Interest. If the Limited Partner elects to have cash and such purchase shall close not later than ninety (90) days following notice to the General Partner from the Limited Partner of its election. The purchase price to the Limited Partner shall be twenty thousand dollars (\$20,000), if such repurchase is effected as a result of the occurrence of any of the events specified in clauses (i) through (vii) of Article V(17)(a), and six hundred and twenty thousand dollars (\$620,000), if such repurchase is effected after the payment of the occurrence of one or more of the event(s) specified in clause (viii) of Article V(17)(a). The General Partner shall not be responsible for any interest on the Capital Contribution of the selling Limited Partner or for tax consequences of any such purchase. Upon delivery of the Limited Partner's notice of its election to sell its Partnership Interest hereunder, the Limited Partner shall have no further rights or obligations under this Agreement. The General Partner shall assume the status of the Limited Partner with respect to the Partnership Interest purchased by them hereunder. The General Partner shall forthwith cause an amended Certificate showing such substitution to be filed wherever required.

18. Obligation of the General Partner to Purchase Condominium Units. If on the date that is fourteen (14) months following Completion of the Condominium Project (other than Townhouses) the Partnership continues to own Condominium Units or any other Partnership Property included as part of the Condominium Project (including for purposes hereof any portion of the Land or other Partnership Property devoted to the development of the Townhouses, or included as part of the Townhouse Unit created under the Master Deed), then the General Partner shall be obligated to offer to purchase such remaining Condominium Units or portion of the Condominium Project from the Partnership (the "Unsold Condominium Property"). Such offer to purchase the Unsold Condominium Property from the Partnership shall be delivered in writing to the Limited





Partner's election in writing to cause the Partnership to accept such offer of the General Partner, or upon the General Partner's election to accept such offer, the General Partner shall be obligated to purchase all Unsold Condominium Property, however, that such obligation of the General Partner provided, however, that such obligation of the General Partner to the extent it pertains to the Land or other Partnership Property devoted to the development of the Townhouses, shall subject to BRA approval of such conveyance which the General Partner shall use its best efforts to obtain. If the Partnership, at the election of either the Limited Partner or the General Partner, accepts the offer of the General Partner with respect to purchasing the Unsold Condominium Property, terms of any such purchase shall be cash and such purchase shall close not later than sixty (60) days following notice the General Partner from either the Limited Partner or the General Partner of such election made on behalf of the Partnership. The purchase price of the Unsold Condominium Property shall be in an amount sufficient to discharge the Condominium Loan, the BRA Condominium Loan and any other indebtedness of the Partnership secured by the Condominium Project. On the purchase date, upon payment of the purchase price for the Unsold Condominium Property, the deed(s) (and the extent appropriate bill(s) of sale and assignment(s)) for the unsold Condominium Units, the Partnership Property included as part of the Condominium Project, and (subject to BRA approval) the Land or other Partnership Property devoted to development of the Townhouses shall be delivered to the General Partner and the purchase price shall be applied by the Partnership to fully discharge the MHFA Condominium Loan and the BRA Condominium Loan.

19. Use of Gross Receipts. All gross receipts of the Partnership shall be applied to the payment of debt service on the establishment and maintenance of reserves, funds, or letters of credit as may be required by and in accordance with the Loan Documents.

## ARTICLE VI

### Rights and Obligations of Limited Partners

1. Management of the Partnership. No Limited Partner shall take part in the management or control of the business of the Partnership or transact any business in the name of the Partnership. No Limited Partner shall have the power or authority to bind the Partnership or to sign any agreement or document in the name of the Partnership.



Limitation on Liability of Limited Partners.

(a) Notwithstanding any other provision of this Agreement, no Limited Partner shall be liable as such for the losses, debts or engagements of the Partnership or the aggregate amount of his/its respective paid-in Capital Contribution, except as may be provided under the provisions of the Act. No Limited Partner shall have any other liability to contribute money to, or in respect of the liabilities, obligations, debts, or contracts of the Partnership, nor any Limited Partner be personally liable for any liabilities, debts, or contracts of the Partnership, except specifically mandated under the Act. No Limited Partner be obligated to make loans to the Partnership. Except as otherwise expressly provided in this Agreement, the General Partner and any Affiliates and general partners thereof shall have no personal liability for the repayment of the Capital Contributions of any Limited Partner.

(b) Prior to the exercise of any of the voting or consent rights of the Limited Partner required by this Agreement, the Limited Partner shall have the right to obtain an opinion of counsel stating that the exercise of such voting rights will not constitute taking part by the Limited Partner in the control of the Partnership's business. The cost of obtaining such an opinion will be borne by the Limited Partner.

3. Outside Activities. Nothing herein contained shall be construed to constitute any Limited Partner hereof the agent of any other Partner hereof or to limit in any manner any Limited Partner in the carrying on of its own businesses or activities. Any Limited Partner may engage in and possess interest in other business ventures (including limited partnerships) of every kind, nature and description, independently or with others, whether existing as of the date hereof or hereafter coming into existence, including, without limitation, acting as general partner or limited partner of other partnerships which own, directly or through interests in other partnerships, housing projects similar to, or in competition with, the Project. Neither the Partnership nor the Partners shall have any rights by virtue of this Agreement in or to any such other business ventures or to the income or profits derived therefrom and nothing shall be construed to render them partners in any such business venture.

4. Execution of Amendments. Each Limited Partner agrees that it shall sign and acknowledge any amendment to this Agreement adopted in accordance with the terms of this Agreement and to execute whatever further instruments shall be necessary or appropriate in connection therewith. The General Partner shall cause the due execution, acknowledgments, and filing for record of any such amendment or further instrument in accordance with the Act, and shall cause a copy of the endorsed copy thereof to be furnished to each Limited Partner.

37390/89



Allocations of Profits and Losses

1. Maintenance of Capital Accounts. A separate capital account (a "Capital Account") shall be maintained for each Partner. Such Capital Accounts shall be maintained and adjusted as the General Partner determines, after consultation with the Limited Partner, in accordance with Treasury Regulation Section 1.704-1(b). In order to segregate for accounting and recordkeeping purposes the Capital Contributions and loans made by the General Partner allocable to the Rental Project and the Condominium Project, respectively, and the General Partner's share of profits, losses, credits and distributions allocable to the construction and operations of the Rental Project and the Condominium Project, respectively, the Capital Account of the General Partner shall be comprised of two separate bookkeeping accounts maintained with respect to the General Partner's investment and interest in the Rental Project (the "Rental Account") and the General Partner's investment and interest in the Condominium Project (the "Condominium Account"). Each of the Rental Account and the Condominium Account comprising the General Partner's Capital Account shall be maintained in a manner analogous to the maintenance of the Partners' Capital Accounts. All references herein to "Capital Accounts" shall be deemed to include, with respect to the General Partner, both the Rental Account and the Condominium Account of the General Partner unless otherwise expressly provided.

2. Profits and Losses of the Rental Project.

(a) After giving effect to the special allocations set forth in Article VII(4), the Net Rental Profits and Net Rental Losses of the Partnership shall be allocated 2% to the General Partner and 98% to the Limited Partner.

(b) After giving effect to the special allocations set forth in Article VII(4), Gain allocable to the Rental Project shall be allocated among the Partners as follows:

(i) First, to the Limited Partner to the extent of any negative balance in its Capital Account;

(ii) Second, to the General Partner to the extent of any negative balance in its Rental Account;

(iii) Third, to the Limited Partner until the balance in its Capital Account equals the unrepaid portion of any Voluntary Advances deemed to be made by it as provided in Article III(3)(c) (including principal and accrued interest);



(iv) Fourth, to the General Partner until balance in its Rental Account equals the sum of the unpaid portion of any Operating Deficit Contributions and any Voluntary Advances made by it (including principal and interest);

(v) Fifth, to the Limited Partner until balance in its Capital Account equals the sum of (A) the unpaid portion of any Voluntary Advances deemed to be it as provided in Article III(3)(c) (including principal and accrued interest) and (B) the amount of its Net Invested Capital;

(vi) Sixth, to the General Partner in the amount of any unreimbursed Development Advances allocable to the Rental Project;

(vii) Seventh, to the General Partner until balance in the General Partner's Rental Account equals the sum of (A) the unpaid portion of any Operating Deficit Contributions and any Voluntary Advances made by it (including principal and accrued interest), (B) the amount of any unreimbursed Development Advances allocable to the Rental Project, and (C) the amount of its Net Invested Capital allocable to the Rental Project; and

(viii) Eighth, among the Limited Partner and General Partner so that, to the extent possible, the ratio of (A) the balance of the Limited Partner's Capital Account in excess of the Limited Partner's Capital Account balance giving effect to clause (v) above, to (B) the balance of the Rental Account of the General Partner in excess of its Rental Account balance after giving effect to clause (vii) above 50% to 50%.

(c) After giving effect to the special allocations set forth in Article VII(4), any Loss allocable to the Rental Project shall be allocated among the Partners as follows:

(i) First, to the General Partner to the extent of any positive balance in its Rental Account;

(ii) Second, to the Limited Partner to the extent of any positive balance in its Capital Account; and

(iii) The balance, if any, 50% to the General Partner and 50% to the Limited Partner.

(d) For purposes of the allocations of Gain and Loss allocable to the Rental Project, a Partner's Capital Account shall be determined immediately prior to the event giving rise to such Gain and Loss as if, at such time, the books of the Partnership had been closed as though at the end of the tax year.





3. Profits and Losses of the Condominium Project.  
Condominium Profits and Condominium Losses of the Partner shall be allocated to the Condominium Account of the General Partner.

4. Special Allocations and Limitations. The following provisions shall apply notwithstanding the provisions of Article VII(2).

(a) Except as otherwise provided in Article VII(4)(b), in the event that any Partner unexpectedly receives in any taxable year any adjustments, allocations, or distributions described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6) which cause or increase the Adjusted Capital Deficit of such Partner, items of such Partner's Partnership income and gain shall be specially allocated to such Partner in such taxable year (and, if necessary in subsequent taxable years) in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Deficit of such Partner as quickly as possible.

(b) (1) Notwithstanding any other provision of Article VII(4), if there is a net decrease in the amount of a Partner's Partnership's Minimum Gain during any fiscal year with respect to a Nonrecourse Liability, each Partner shall be allocated items of income and gain for such fiscal year (and, if necessary, for subsequent years) in an amount equal to the greater of the following:

(A) the portion of such Partner's share of the net decrease in Minimum Gain during such fiscal year that is allocable to the disposition of Partnership Property subject to such Nonrecourse Liability, or

(B) the amount of such Partner's Adjusted Capital Account Deficit (determined before any allocations for such fiscal year of any items of income, gain, loss or deduction or items described in Section 705(a)(2)(B) of the Code).

For purposes of the foregoing, a Partner's share of the net decrease in Minimum Gain attributable to a Nonrecourse Liability shall be determined in accordance with the provisions of Section 1.704-1T(b)(4)(iv)(f) of the Treasury Regulations. Further, it is the intent that the allocations provided in Article VII(4)(b) be determined in accordance with the provisions of Section 1.704-1T(b)(4)(iv)(e) of the Treasury Regulations.



(2) After giving effect to Article VII(4)(b) above, and notwithstanding any other provision of this Article VII(4), if there is a net decrease in the amount of the Partnership's Minimum Gain during any fiscal year with respect to a Partner Nonrecourse Debt, the Partner bearing the economic risk of loss with respect to such Partner Nonrecourse Debt shall be allocated items of income and gain for such fiscal year (and, if necessary, for subsequent years) in an amount equal to the greater of the following:

- (A) the portion of such Partner's share of the net decrease in the Minimum Gain during such fiscal year that is allocable to the disposition of Partnership Property subject to such Partner Nonrecourse Debt, or
- (B) the amount of such Partner's Adjusted Capital Account Deficit (determined before any allocation for such fiscal year of any items of income, gain, loss, or deduction or items described in Section 705(a)(2)(B) of the Code).

For purposes of the foregoing, a Partner's share of the net decrease in Minimum Gain attributable to Partner Nonrecourse Debt shall be determined in accordance with the provisions of Section 1.704-1T(b)(4)(iv)(h)(5) of the Treasury Regulations. Further, it is the intent that the allocation provided in this Article VII(3)(b)(2) be determined in accordance with the provisions of Section 1.704-1T(b)(4)(iv)(h)(4) of the Treasury Regulations.

(c) If in any Fiscal Year there is a net increase during such year in the amount of Partnership Minimum Gain attributable to a Partner Nonrecourse Debt, such Partner shall be specially allocated items of Partnership loss or deduction in an amount equal to the excess of

- (i) the amount of such net increase, over
- (ii) the aggregate amount of any distributions during such year to such Partner of the proceeds of such debt that are allocable to such increase in Partnership Minimum Gain. Items to be so allocated shall be determined in accordance with Section 1.704-1T(b)(4)(iv)(h)(3) of the Treasury Regulations. The allocations provided for in this Article VII(4)(c) are intended to comply with the allocation required by Section 1.704-1T(b)(4)(iv)(h) of the Treasury Regulations.



(d) Notwithstanding the provisions of Article VII(2)(a) and (b) above, in no event shall Net Rental Losses and/or Losses allocable to the Rental Project be allocated to any Partner if such allocation would result in such Partner having an Adjusted Capital Account Deficit at the end of the fiscal year. In the event that the allocation of such Net Rental Losses and/or Losses allocable to the Rental Project to either the General Partner or the Limited Partner would cause or increase any Adjusted Capital Account Deficit with respect to such Partner, all Net Rental Losses and/or Losses allocable to the Rental Project in excess of the limitation set forth in this Article VII(4)(d) shall be allocated to the remaining Partner. If an allocation of Net Rental Losses and/or Losses allocable to the Rental Project would cause or increase a Partner's Adjusted Capital Account Deficit with respect to both the General Partner and the Limited Partner, then all such Net Rental Losses and/or Losses allocable to the Rental Project shall be allocated to the General Partner.

(e) The allocations set forth in Article VII(4)(b), (c) and (d) (the "Regulatory Allocations") are intended to comply with certain requirements of Treasury Regulation S 1.704-1(b). Notwithstanding any other provision of this Agreement, Article VII (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating other Net Rental Profits and Net Rental Losses to all items of income, gain, loss, and deduction between the General Partner and the Limited Partner so that, to the extent possible, the net amount of such allocations of other Net Rental Profits and Net Rental Losses, and other items and Regulatory Allocations to each Partner shall be equal to the net amount that would have been allocated to each Partner if the Regulatory Allocations had not occurred.

(f) The respective interests of the Partners in the Condominium Profits and Losses, the Net Rental Profits and Net Rental Losses, and Gain and Loss allocable to the Rental Project, or items thereof, shall remain as set forth above unless changed by amendment to this Agreement or by an assignment of a Partnership Interest authorized by the terms of this Agreement. Except as otherwise provided herein, for all purposes, all items of income, gain, loss, deduction, or other items with respect to the operations of the Rental Project shall be allocated to the Partners in the same manner as are Net Rental Profits from operations; provided, however, that with respect to property contributed to the Partnership by a Partner, such items shall be shared among the Partners so as to take into account the variation between the basis of such property and its fair market value at the time of contribution in accordance with Section 704(c) of the Code.



... to the Regulatory Allocations, the General Partner shall be allocated no less than 1% of each item of Partner's income, gain, loss, deduction, or credit at all times during the existence of the Partnership.

(h) Notwithstanding the allocations described in Article VII(2), or the distributions described in Article or Article XII, the Partnership shall pay to the Limited Partner from the net proceeds arising from a sale or other disposition of all or substantially all of the Rental Project or the Rental Units an amount equal to the excess of (A) the total amount of liquidation proceeds which would be distributable to the General Partner pursuant to Article XI if no amount were payable pursuant to this Article VII(4)(h) over (B) the total amount of liquidation proceeds which would be distributable to the General Partner pursuant to Article XII(2) if (i) no amount were payable pursuant to Article VII(4)(h) and (ii) the Rental Account of the General Partner were reduced (if applicable, below zero) by the amount of ar Development Advances and/or Credit Adjuster Advances made by the General Partner to the Partnership and not previously reimbursed to the General Partner and an amount of Gain equal to the amount of such reduction were recognized on the sale of the Rental Project. Notwithstanding the allocation of Net Rental Profits and Net Rental Losses pursuant to Article VII(2)(a), the deduction to this Article VII(4)(h) shall be specially allocated 100% to the General Partner and shall reduce its Rental Account prior to the distribution of liquidation proceeds pursuant to Article XII(2).

(i) For purposes of allocating Nonrecourse Liabilities among the Partners under Section 1.752-1T(a)(2)(i) of the Treasury Regulations, the General Partner's interest in Partnership profits shall equal 2 percent and the Limited Partner's interest in Partnership profits shall be 98 percent.

## ARTICLE VIII

### Cash Distributions

1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(a) "Condominium Proceeds" means the excess of all cash receipts and other consideration arising from the interim operation and sale or other disposition of the Condominium Units or all or substantially all of the Condominium Project, or any proceeds realized from condemnation, insured casualty, or insured title defect with respect to the Condominium





paid out of such cash receipts and other consideration: the amount of cash disbursed or to be disbursed in connection with or as an expense of such sale or other disposition of Condominium Units or the Condominium Project (including, without limitation, any condominium fees and other applicable operational expenses), (ii) the amount necessary for the payment of all debts and obligations of the Partners arising from or otherwise related to such sale or other disposition of the Condominium Project and to which such disposition is subject and which are otherwise then due (including, without limitation, any brokerage or sales commissions, the MHFA Condominium Loan, and the BRA Condominium Loan, the BRA Rental Loan, the HoDAG Loan, the SHARP Loan, the BRA Rental Loan, the MHFA Rental Loan, the Condominium Contributions or loans made to the Partnership by the Partners or their respective Affiliates), and (iii) the amounts set aside by the General Partner as reserves for unforseen or contingent liabilities associated with the Condominium Project. Condominium Proceeds shall be determined separately for each fiscal year and shall not be cumulative. Amounts released to the Partnership from any Segregated Account established and funded pursuant to Article III(3) or an escrow established and funded pursuant to Article III(2)(h) (and interest included in any such Segregated Account or escrow otherwise paid pursuant to Article III(2) or (3)), shall not be considered in the computation of Condominium Proceeds.

(b) "Rental Project Sale Proceeds" means the exclusive of all cash receipts and other consideration arising from the sale or other disposition of all or any portion of the Rental Project and the Rental Units or any proceeds realized from condemnation, or insured title defect with respect to the Rental Project, but excluding proceeds from rental interruption insurance or a temporary condemnation in the nature of a lease if any, over the sum of the following to the extent paid out of such cash receipts and other consideration: (i) the amount of cash disbursed or to be disbursed in connection with or as an expense of such sale or other disposition of the Rental Project or the Rental Units, (ii) the amount necessary for the payment of all debts and obligations of the Partnership arising from the sale or other disposition of the Rental Project or the Rental Units and to which such sale or other disposition is subject and which are otherwise then due (including, without limitation, the MHFA Rental Loan, the SHARP Loan, and the BRA Rental Loan, but not including, however, the MHFA Condominium Loan, the BRA Condominium Loan or any Development Advances, Operating Deficiencies Contributions or loans made to the Partnership by the Partners or their respective Affiliates), (iii) the amount of any unpaid or deferred portion of any Investor Services Fees or management fees then due and payable pursuant to the Investor Services Agreement, the Management Agreement, or the Incentive



liabilities associated with the Rental Project. Amounts released to the Partnership from any Segregated Account established and funded pursuant to Article III(3) or an escrow established and funded pursuant to Article III(2)(h), and interest included in any such Segregated Account or escrow otherwise paid pursuant to Article III(2) or (3), shall not be considered in the computation of Rental Project Sale Proceeds.

(c) "Refinancing Proceeds" means the excess of the gross proceeds of any borrowings by the Partnership secured by one or more mortgages on the Rental Project over the sum of the amounts disbursed to repay then existing loans of the Partnership (excluding the MHFA Condominium Loan and the BRA Condominium Loan) and to pay and provide for all debts and obligations of the Partnership in connection with the Rental Project then to be paid or which are otherwise then due (not including, however, any loans made to the Partnership by the Partners or their respective Affiliates), (ii) all reasonable expenses of such borrowings, including, without limitation, commitment fees, brokers' commissions, and attorneys' fees, (iii) all amounts paid to improve the Rental Project or the Rental Units or for any other purpose in order to satisfy conditions to or established in connection with such borrowings, (iv) the amount of any unpaid or deferred portion of any Investor Services Fees or management fees then due and payable pursuant to the terms of the Investor Services Agreement, the Management Agreement, or the Incentive Management Agreement, and (v) any amounts used to meet the Operating Expenses of the Rental Project or set aside by the General Partner as reserves for the Rental Project. Designated Proceeds, as defined in Article V(14)(d), and amounts released to the Partnership from any Segregated Account established and funded pursuant to Article III(3) or an escrow established and funded pursuant to Article III(2)(h), and any interest included in any such Segregated Account or escrow or otherwise paid pursuant to Article III(2) or (3), shall not be considered in the computation of Refinancing Proceeds. The conversion of the MHFA and BRA Mortgages to the MHFA Rental and Condominium Mortgages and the BRA Rental and Condominium Mortgages shall not be deemed to be a "refinancing" for purposes of the definition of "Refinancing Proceeds".

(d) "Net Rental Cash Flow" means Net Rental Profits or Net Rental Losses as shown on the books of the Partnership, adjusted by the addition of all items set forth in Article VIII(1)(d)(i) and further adjusted by the deduction of all items set forth in Article VIII(1)(d)(ii):

Losses: (i) Additions to Net Rental Profits or Net Rental



amortization deductions allocable to the Rental Project taken in computing such Net Rental Profits or Net Rental Losses;

(B) all other receipts of the Partner allocable to the Rental Project not included in Rental Profits or Net Rental Losses, exclusive of Capital Contributions, the proceeds of loans, and similar capital receipts not provided for elsewhere

(C) any other funds deemed available for distribution derived from, or allocable to, the Project, and designated as Net Rental Cash Flow, General Partner, including any amounts previously aside as reserves for the Rental Project by the General Partner which it no longer regards as necessary to maintain.

(ii) Deductions from Net Rental Profits or Net Rental Losses:

(A) all amortization payments for the current fiscal year on the obligations of the Partnership allocable to the Rental Project (excluding the MHFA Condominium Loan and the BRA Condominium Loan) to the extent not deducted in determining such Net Rental Profits or Net Rental Losses;

(B) expenditures for the acquisition of property of the Partnership included as part of the Rental Project and similar capital outlay items with respect to the Rental Project not deducted in determining such Net Rental Profits or Net Rental Losses;

(C) amounts added to the Partnership reserves allocable to the Rental Project determined the General Partner to be necessary, including the reserve for replacements required by MHFA; and

(D) to the extent that all or any portion of the compensation payable to the Management Agent under the Management Agreement or the Incentive Management Agreement, or to the Investor Services Agent under the Investor Services Agreement, is determined to be non-deductible, an amount equal to the non-deductible portion of such payments.

Net Rental Cash Flow shall be determined separately for each fiscal year and shall not be cumulative. Amounts released to the Partnership from any Segregated Account established and funded pursuant to Article III(3) or an escrow established and



in any such Segregated Account or escrow or otherwise paid pursuant to Article III(2) or (3), shall not be considered the computation of Net Rental Cash Flow.

2. Distributions of Net Rental Cash Flow and Refinancing Proceeds. Subject to the provisions of the Regulatory Agreement, any Refinancing Proceeds and Net Rental Cash Flow (determined after the payment of management fees and Investor Services Fees then due and payable under the terms of the Investor Services Agreement, the Management Agreement and Incentive Management Agreement), to the extent available, be distributed to and among the Partners, within 75 days after the close of each fiscal year, as follows:

(a) First, to the Limited Partner to repay the principal and accrued interest in respect of any Voluntary Advances deemed to be made pursuant to the provisions of Article III(3)(c);

(b) Second, to the General Partner to repay any Operating Deficit Contributions and the principal and accrued interest in respect of any Voluntary Advances made by it; and

(c) The balance, if any, 50% to the General Partner and 50% to the Limited Partner.

3. Distributions of Rental Project Sale Proceeds. Any Rental Project Sale Proceeds, other than net proceeds upon liquidation of the Partnership, shall be distributed to and among the Partners in the following amounts and order of priority:

(a) First, to the Limited Partner to repay the principal and accrued interest in respect of any Voluntary Advances deemed to be made pursuant to the provisions of Article III(3)(c);

(b) Second, to the General Partner to repay any unreimbursed Operating Deficit Contributions and any unreimbursed Voluntary Advances made by it, together with any accrued interest thereon;

(c) Third, to the Limited Partner in an amount equal to its Net Invested Capital;

(d) Fourth to the General Partner to repay any Development Advances;

(e) Fifth, to the General Partner in an amount equal to its Net Invested Capital allocable to the Rental Project;

(f) The balance, if any, 50% to the General Partner and 50% to the Limited Partner.





4. Distributions of Condominium Proceeds. Subject to the provisions of the Regulatory Agreement, all Condominium Proceeds, to the extent available after the repayment of any unreimbursed Condominium Contributions (including any related borrowing costs incurred by the General Partner in connection therewith), shall be distributed to the General Partner.

## ARTICLE IX

### Admission of Successor and Additional General Partners; Removal and Withdrawal of General Partner

#### 1. Admission of Successor or Additional General Partners.

(a) The General Partner shall not have any right to retire or withdraw voluntarily from the Partnership or to sell, transfer, or assign all or any portion of its interest, without the prior written consent of the Limited Partner; provided, however, that the General Partner may assign or encumber all or a portion of the General Partner's interest in the Net Rental and Condominium Cash Flow, other cash proceeds and/or any fees payable to the General Partner, which shall not be considered a sale, assignment, transfer or encumbrance for the purposes hereof so long as in the event of such assignment or encumbrance or any foreclosure thereof, the General Partner will remain a general partner of the Partnership. Prior to the twentieth anniversary of Completion, such consent of the Limited Partner to the withdrawal of the General Partner may be granted or withheld by the Limited Partner in its sole discretion. Thereafter, such consent may not be unreasonably withheld. In the event that such prior written consent has been obtained by the General Partner (and, if required at such time, the consent of the Mortgagees has been obtained), the General Partner shall designate one or more persons to be its successor. In no event shall the interests of the other Partners be affected thereby. The designated successor General Partner shall be admitted as such to the Partnership upon approval of the Limited Partner, in its sole and absolute discretion, of such successor General Partner and upon satisfying the conditions of this Article IX, Article IV(3)(c) and Article XIV(1). Any voluntary withdrawal by any General Partner from the Partnership or any sale, transfer, or assignment by any General Partner of its interest shall be effective only upon the admission in accordance with this Article IX(1)(a) and Article XIV(1) of a successor General Partner.

(b) Any successor General Partner shall pay to the Partnership all costs and expenses incurred in connection with such substitution, including, without limitation, legal and other costs incurred in the review and processing of the assignment, in amending this Agreement, and in filing the amended Agreement.



...successor General Partner shall by its execution of this Agreement and as a condition precedent receiving any interest in the Partnership or the Partnership Property, agree to be bound by this Agreement to the same extent and on the same terms as each predecessor General Partner.

(d) Upon the admission of any successor General Partner, an amendment to this Agreement reflecting such admission, and stating the agreement set forth in Article IX(1)(c) and in all respects in compliance with the requirements of the Act shall be filed in accordance with Act.

## 2. Removal of a General Partner.

(a) The Limited Partner shall have the right to remove the General Partner as a General Partner for any the following reasons:

(i) the General Partner has committed an act or acts of gross negligence, willful misconduct, malfeasance, fraud, or an act or acts outside the scope of its authority under this Agreement, has breached its fiduciary duties as General Partner, has breached any material agreement set forth herein, or has breached any representation or warranty contained in Article V(10) of this Agreement.

(ii) the General Partner has breached any covenant contained in Article V(11) of this Agreement and as the following covenants only has not cured such a breach according to the following:

(A) if the General Partner has breached covenant to cause the Partnership to obtain and keep in force all building, zoning and other applicable certificates, permits and licenses necessary to permit the construction, use, occupancy and operation of the Project as contained in Article V(11)(e) and has not cured said breach within the earlier of (1) 90 days after it has notice thereof (or such longer time may be required to cure, provided the General Partner promptly commences and diligently prosecutes such cure), or (2) the period of time the governmental agency charged with the issuance of certificates, permits and licenses allows the General Partner to obtain any applicable certificate, permit, license which is the subject of such breach without asserting violation or instituting an enforcement action against the Partnership for lack of such certificate, permit, or license.

(B) if the General Partner has breached its covenant to cause the Partnership to operate the Project Property, including each of the Units, in compliance with all



not achieved such compliance within the earlier of (1) 90 days after it has notice thereof (or such longer time as may be required to achieve such compliance, provided the General Partner promptly commences and diligently attempts to achieve such compliance), or (2) the period of time the governmental agency charged with the enforcement of such regulations, ordinances and subdivision laws, rules and regulations allows the General Partner to achieve compliance without asserting a violation or instituting an enforcement action against the Partnership.

(C) if the General Partner has breached its covenant contained in Article V(11)(h) to cause the Partnership to comply with all the written terms and conditions of the residential lease agreement for each of the Rental Units and such breach does not cause a violation of the Loan Documents and the General Partner has not cured such breach within the cure period, if any, provided by the document itself.

In the event that the General Partner is allowed a period to cure as set forth in this Article IX(2)(a), then there shall be no right of removal for any breach of any representation made by the General Partner directly relating to such event causing such breach of covenants during the above cure periods.

(iii) the General Partner or the Partnership has taken any action or inaction which would cause:

(A) the termination of the Partnership for federal income tax purposes (other than by sale of the Limited Partner's Interest as specifically permitted by this Agreement),

(B) the Partnership to be treated for federal income tax purpose as an association taxable as a corporation,

(C) the Partnership to violate any federal or state securities laws,

(D) the Partnership to fail to qualify as a limited partnership under the Act, or

(E) the Limited Partner to be liable for Partnership obligations in excess of its Capital Contribution and any prior distributions in the limited circumstances when required by the Act.

(iv) The General Partner has caused the Partnership to violate in any material respect any provision of any document or agreement with the Mortgagees or any governmental regulation and has not cured said violation within



Partner has operated the Partnership Property or the Rental Project in a manner so as not to qualify as a "qualified low-income housing project" under Section 42(g)(1)(B) of the Code; provided that the Limited Partner shall have no right of removal by reason of this Article IX(2)(a)(v) where the General Partner despite its best efforts to do so cannot reasonably alter its management of the Partnership Property and the Project so as to comply with any change in the Code or Treasury Regulations governing such "qualified low-income housing projects."

(vi) Any other event of removal or withdrawal under the Act with respect to such General Partner has occurred.

(b) Upon the Limited Partner's vote to remove the General Partner for any reason pursuant to Article IX(2)(a), the General Partner shall be removed and the remaining or successor General Partner shall cause the Partnership to redeem the removed General Partner's Interest for an amount equal to 50% of the purchase price paid to the Partnership by the successor General Partner for such interest, but in no event to exceed 50% of the Fair Market Value thereof, as determined in accordance with Article IX(7), and such General Partner shall thereafter cease to have any interest in the capital, profits, losses, distributions, and all other economic incidents of ownership of the Partnership. No removal of a General Partner shall affect the vested rights of any General Partner (including the right to receive fees earned and allocations of profit, loss or credit that are attributable to the period prior to the date of such removal).

(c) The removed General Partner shall be liable for all reasonable costs and expenses incurred in the admission of a successor General Partner and for all other costs, expenses, or damages incurred by the Partnership as a direct result of the removal of the General Partner pursuant to this Article IX(2).

(d) The receipt by the Partnership, the General Partner, or the Limited Partner of a notice of an event of default under the Mortgages or the Mortgage Notes and the expiration of any applicable cure periods shall trigger the automatic removal of the General Partner, unless the event of default is waived in writing by the Mortgagee issuing such notice, or is waived by consent of the Limited Partner prior to the redemption of the General Partner's Interest as provided in Article IX(2)(b).





General Partner.  
General Partner, such General Partner shall cease to respect to General Partner of the Partnership. Upon such an Event of Bankruptcy, the remaining or successor General Partners shall cause the Partnership to redeem such General Partner's Interest for its Fair Market Value, as determined in accordance with Article IX(7), within thirty (30) days after a successor General Partner is admitted to the Partnership.

(b) If, at the time of an Event of Bankruptcy with respect to a General Partner, such General Partner was the General Partner the Limited Partner shall have the right, without the consent of any of the other Partners unless otherwise required by the then applicable provisions of the Act, to designate the successor General Partner and the Limited Partner may, within ninety (90) days of the General Partner's ceasing to be a General Partner of the Partnership, elect to continue the business of the Partnership.

4. Liability of a Removed or Withdrawn General Partner.  
Any General Partner who for any reason voluntarily or involuntarily withdraws or is removed from the Partnership or sells, transfers, or assigns its Interest shall not be liable for any obligations of the Partnership incurred after the effective date of its withdrawal or removal unless such obligations result directly from omissions, acts, or actions taken while it was a General Partner, and except for any obligation or liability that may arise pursuant to the provisions of Article V(9). In the event that the sole General Partner has been removed or has withdrawn, the Limited Partner shall have the right, without the consent of any of the other Partners unless required by the Act at such time, to designate the successor General Partner and the Limited Partner may, within ninety (90) days of the General Partner's removal, elect to continue the business of the Partnership.

5. Restrictions on Transfer of General Partner's Interest. Notwithstanding anything to the contrary in Article IX, the assignment or transfer of a General Partner's Interest shall at all times be subject to the same restrictions applicable to an assignment or transfer of the Interest of a Limited Partner as set forth in Article X hereof. No assignee or transferee of all or any part of the Interest of a General Partner shall have any right to become a General Partner except as provided in Article IX.

6. Continuation of the Business of the Partnership. If, at the time of an event described in Article IX(2) or Article IX(3) with respect to a General Partner, such General Partner was not the sole General Partner, the remaining General Partner or General Partners may (and hereby agree to) elect to continue



the business of the Partnership and shall immediately: (i) give Notice to the Limited Partner of such event; and (ii) any amendments to this Agreement and execute and file for record any amendments or other documents or instruments necessary to reflect the termination of the interest of the General Partner as to which such event has occurred and the General Partner's having ceased to be a General Partner in order to comply with the requirements of the Act.

7. Valuation and Sale of Interest of Former General Partner. Upon the occurrence of any withdrawal or removal of a General Partner described in Article IX(2) or Article IX(3), the remaining or successor General Partners shall, not later than thirty (30) days after such removal or withdrawal, provide Notice to the removed or withdrawn General Partner of their choice of an appraiser to appraise the Partnership Property. They shall determine and provide a report on the fair market value of the Partnership Property, setting forth in reasonable detail the methods and assumptions utilized in arriving at such fair market value determination (the "Appraised Value"). Not later than thirty (30) days after receipt of the appraiser's report, the remaining or successor General Partners shall furnish to the withdrawn General Partner, by Notice, a calculation, reviewed by the Accountants, of the amount that the withdrawn General Partner would receive upon a distribution pursuant to Article XII, upon the liquidation of the Partnership after the Partnership Property by the Partnership for an amount equal to the Appraised Value and allocation of the resulting gain or loss pursuant to Article VII(2) and (3) (the "Fair Market Value"). In the event that the withdrawn General Partner disputes such determination of the Fair Market Value of its interest, it shall deliver a Notice in writing to the successor or remaining General Partner(s), within thirty (30) days of its receipt of notice of such Fair Market Value determination, which notice shall set forth (i) the reasons forming the basis of such dispute, and (ii) the name of an appraiser appointed by the withdrawn General Partner. Within fifteen (15) days of the successor or remaining General Partner(s) receipt of any such dispute notice appointing an appraiser, the appraiser previously selected by the successor or remaining General Partner(s) and the appraiser appointed by the withdrawn General Partner shall each appoint a third independent appraiser, or failing action within such period the appraisers, the unappointed third appraiser shall be appointed by the American Arbitration Association, Boston, Massachusetts, upon application of any party or appraiser. The appraisers shall proceed by majority vote to determine the fair market value of the Partnership Property, setting forth in reasonable detail the methods and assumptions utilized in arriving at such fair market value determination (the "Appraised Value") and such determination shall be final and binding upon all interested persons. The successor or remaining General Partner(s) shall promptly furnish to the



financial condition and assets and liabilities as they may reasonably request. The Partnership shall bear the fees and expenses of the appraiser appointed by the successor or remaining General Partner(s), the withdrawn General Partner shall bear the fees and expenses of the appraiser appointed it, and the fees and expenses of the third appraiser shall be borne one-half by the Partnership and one-half by the withdrawn General Partner.

The closing of the redemption by the Partnership of the removed or withdrawn General Partner's Interest shall take place at the office of the remaining or successor General Partners not later than fifteen (15) days after such Notice, at such other time and place as the parties may agree. Payment of the purchase price at closing shall be made by wire transfer or other form of available funds.

## ARTICLE X

### Assignability of Interests of Limited Partners

#### 1. Substitution and Assignment of a Limited Partner's Interest.

(a) A Limited Partner may not sell, transfer, assign, pledge, or otherwise dispose of all or any part of its Interest unless the General Partner shall have previously consented to such assignment in writing, the granting or denying of such consent being in the General Partner's absolute discretion. The Partnership shall not be required to recognize any such assignment until the instrument conveying such Interest has been delivered to the General Partner for recordation on the books of the Partnership. Unless an assignee becomes a Substitute Limited Partner in accordance with the provisions of Article X(1)(b), it shall not be entitled to any of the rights granted to a Limited Partner hereunder, other than the right to receive all or part of the share of the Net Rental Profits, Net Rental Losses, Condominium Profits, Condominium Losses, cash distributions, or returns of capital, or Credits to which his assignor would otherwise be entitled.

(b) An assignee of the Interest of a Limited Partner, or any portion thereof, shall become a Substitute Limited Partner entitled to all the rights of a Limited Partner if, and only if:

- (i) the assignor grants to the assignee such right;
- (ii) the General Partner consents to such substitution, the granting or denying of which consent being in the General Partner's absolute discretion;



assignment, costs incurred by the Partner in obtaining the review and processing of the admission of the assignee as a Partner of the Partnership's then current Agreement; and

(iv) the assignee executes and delivers such instruments, in form and substance satisfactory to the General Partner, as the General Partner may deem necessary or desirable to effect such substitution and to confirm the agreement of assignee to be bound by all of the terms and provisions of Agreement.

(c) Upon the admission of any Substitute Limited Partner, an amendment to this Agreement, reflecting such admission, shall be filed with the appropriate governmental authority or authorities. Such amendment shall reflect the name, address and Capital Contribution of such Substitute Limited Partner and any other information required by the Agreement and shall set forth the agreement of such Substitute Limited Partner to be bound by all the provisions of this Agreement.

(d) The Partnership and the General Partner shall be entitled to treat each Person set forth on Exhibit A as the absolute owner of its Interest in all respects, and shall incur no liability for distributions of cash or other property made in good faith to such owner until such time as a written assignment of such Interest has been received and accepted by the General Partner and recorded on the books of the Partnership. The General Partner may refuse to accept an assignment until the end of the next successive quarterly accounting period.

## ARTICLE XI

### Management Agent

General Partner to Engage Management Agent(s). The General Partner shall have responsibility for engaging one or more management agents acceptable to MHFA, and any other governmental authority having jurisdiction over the Project, who shall manage and operate the Partnership Property in accordance with the requirements of MHFA, or any other governmental authority having jurisdiction with respect thereto. The initial Management Agent shall be Douglass Plaza Management Co., engaged pursuant to the MHFA-approved Management Agreement. The General Partner may, in its





...to the Management Agent other than the Management Agent shall at any time consent or approval of MHFA) be an Affiliate of a General Partner, but shall not be a General Partner. Any success management agent shall be entitled to receive such management fees as may be agreed upon between the General Partner and agent and which shall be approved by MHFA.

## ARTICLE XII

### Dissolution of Partnership

1. Dissolution. The Partnership shall be dissolved, the business of the Partnership shall be terminated in accordance with the Act, upon the occurrence of any of the following events:

(i) The dissolution, liquidation, withdrawal, retirement, removal, and/or Event of Bankruptcy of a General Partner, who is, at such time, the sole General Partner of the Partnership; provided, however, that the Partnership shall not be dissolved in the event of the dissolution, liquidation, withdrawal, retirement, removal, or Event of Bankruptcy of a sole remaining General Partner if the Limited Partner shall, within ninety (90) days, elect to continue the Partnership and the Partnership business, and shall designate a successor general partner or general partners, which upon its admission to the Partnership shall automatically succeed to the Interest of the withdrawn General Partner, which shall be deemed to have been extinguished;

(ii) An election to dissolve the Partnership made in writing by all of the Partners that the Partnership be dissolved in accordance with the Act;

(iii) The sale or other disposition of all or substantially all of the Partnership Property, excluding any sale or disposition of the Condominium Units and the 33 parking spaces included as part of the Condominium Project;

(iv) The expiration of the Term; or

(v) The occurrence of any other event causing the dissolution of a limited partnership under the Act.

2. Distribution of Partnership Assets. Upon the dissolution of the Partnership, the Partnership business shall be wound up and its assets liquidated. The net proceeds



all events in accordance with the Act):

- (i) First, to the payment of the debts liabilities of the Partnership (excluding any amounts which be owed to any Partner), and to pay the expenses of liquidation of the Partnership;
- (ii) Second, to establish any reserves to business judgment, in accordance with sound business judgment, deems reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership, which reserves may be paid over to an escrow agent for the purpose of (i) distribution to be held by such agent for the purpose of (i) distribution of such reserves in payment of such period as the General Partner or such liquidator may deem advisable, distribution thereof in the manner provided in this Article XII
- (iii) Third, to the Limited Partner an amount equal to the lesser of (X) any unreimbursed Voluntary Advances together with accrued interest earned thereon, deemed to have been made pursuant to the provisions of Article III(3)(c), (Y) its positive Capital Account balance;

(iv) Fourth, to the General Partner an amount equal to the lesser of (X) any unreimbursed Condominium Contributions (not to exceed, in any event, the proceeds realized from the sale of any assets included as part of the Condominium Project upon dissolution, less all debts, expenses and reserves properly allocable to the Condominium Project) and unreimbursed Operating Deficit Contributions and any unreimbursed Voluntary Advances, together with accrued interest earned thereon, or (Y) its positive Capital Account balance;

(v) Fifth, to the Limited Partner in an amount equal to the lesser of (X) its paid-in Capital Contribution reduced by any distributions made pursuant to Article VIII(3) or (Y) its positive Capital Account balance;

(vi) Sixth, to the General Partner in an amount equal to the lesser of (X) the sum of (1) any unreimbursed Development Advances and (2) its paid-in Capital Contribution reduced by any distributions made pursuant to Article VIII(3) or (Y) its positive Capital Account balance; and

(vii) Seventh, to the Partners pro rata in accordance with their remaining Capital Account balances.

3. Termination of the Partnership. The Partnership shall terminate when all Partnership Property shall have been disposed of (except for any liquid assets not so disposed of), and the net proceeds therefrom, as well as any other liquid



Article XII and in accordance  
ARTICLE XIII

Bank Accounts; Books of Account;  
Reports; Tax Matters Partner

1. Bank Accounts. The funds of the Partnership shall be deposited in the name of the Partnership in such separate Partnership bank account or accounts, and in such bank or banks whose deposits are insured by an agency of the Federal Government, in the name of the Partnership as shall be determined by, and in the sole discretion of, the General Partner and the General Partner shall arrange for the appropriate conduct of such account or accounts.
2. Books of Account. There shall be kept at the principal office of the Partnership true, correct, and complete books of account, maintained in accordance with federal income tax accounting principals and otherwise in accordance with generally accepted accounting principles, consistently applied in which shall be entered fully and accurately each and every transaction of the Partnership. Separate books, records and accounts shall at all times be kept with respect to the Rental Project and the Condominium Project. Each Partner shall have access thereto to inspect and copy such books of account at all reasonable times. Any Partner shall further have the right to a private audit of the books and records of the Partnership, provided such audit is made at the expense of the Partner desiring the same and is made at reasonable times during normal business hours after due Notice.
3. Reports.

(a) The General Partner shall cause to be prepared and delivered to the Limited Partner (and in the case of the items listed in Article XIII(3)(a)(i), (ii) and (iv) with a copy to the Limited Partner at its Notice address, attention: Office of Controller) and, when required, shall cause the Partnership to file with relevant governmental agencies, the following:

(i) As soon as available and in any event not later than ninety (90) days after the end of each year, the audited financial statements of the Partnership, as of the end of such year, including balance sheet, statement of changes in Partners capital accounts, statement of sources and uses of funds, and statements summarizing the basis of Credits and depreciation, with the report of the Accountants thereon to the



... of the Partnership shall present fairly the financial results of its operations for the year then ended, in conformity with federal income tax accounting principles and otherwise in accordance with generally accepted accounting principles applied on a consistent basis.

(ii) As soon as available and in any event later than one hundred and eighty (180) days after the end of each fiscal year, the unaudited financial statements of the managing general partners of the General Partner, Robert M. Kargman and Arthur D. Ullian (and/or any successor managing general partner(s) of the General Partner which is/are not affiliated with Messrs. Kargman and Ullian), as of the end of such year, including the balance sheets, related statements of income and retained earnings, and statement of changes in financial positions for such year, with the report of certified public accountants thereon to the effect that such statements present fairly the financial position at the end of such year and the results of its operations and changes in its financial position for the year then ended, in conformity with federal income tax accounting principles and otherwise in accordance with generally accepted accounting principles applied on a consistent basis.

(iii) If and when filed with MHFA, any operating budget requested to be furnished to the Mortgagee pursuant to the Loan Documents.

(iv) Any and all periodic reports required to be provided to the Limited Partner by any federal, state, or local government agency having jurisdiction over the Project, the Partnership Property, or the Partnership.

(b) The General Partner shall cause to be prepared and delivered to each Limited Partner (with a copy to the Limited Partner at its Notice address, attention: Office of Controller) and, when required, shall cause the Partnership to file with relevant governmental agencies, the following:

(i) As soon as available and in any event not later than sixty (60) days after the end of each year, all information necessary for the preparation of each Limited Partner's Federal income tax return for each year in respect of income, gains, losses, deductions, or credits and the allocation thereof to each Partner, including a Form K-1 (or other comparable form subsequently required by the Internal Revenue Service) and a copy of the Federal "Partnership Return" and any state or local partnership tax return required to be filed by the Partnership.

(ii) Such other information regarding the state of the business, financial condition and affairs of the Partnership, as any Limited Partner, from time to time, may reasonably request.





(c) The General Partner shall deliver to any Limited Partner from time to time, and within ten (10) days after request therefor, all such further statements and information as such Limited Partner may request in order to enable such Limited Partner to determine or verify the amounts of all payments which the General Partner shall be required to make to the Partners and the amounts of credits, and all such statements and information needed by such Limited Partner in connection with reports and forms required to be filed by Limited Partner pursuant to federal or state securities laws.

4. Tax Matters Partner.

(a) The Tax Matters Partner shall have and perform all of the duties required under the Code, including the following duties:

(i) Furnish the name, address, profits interest and taxpayer identification number of each Partner to the Service; and

(ii) Within five (5) business days after the receipt of any correspondence or communication relating to the Partnership or a Partner from the Service, the Tax Matters Partner shall forward to each Partner a photocopy of all such correspondence or communication(s). The Tax Matters Partner shall, within five (5) business days thereafter, advise each Partner in writing of the substance and form of any conversation or communication held with any representative of the Service.

(b) The Tax Matters Partner shall not without the affirmative written consent of the Limited Partner:

(i) Extend the statute of limitations for assessing or computing any tax liability against the Partnership (or the amount or character of any Partnership tax items);

(ii) Settle any audit with the Service concerning the adjustment or readjustment of any Partnership tax item(s);

(iii) File a request for an administrative adjustment with the Service at any time or file a petition for judicial review with respect to any such request;

(iv) Initiate or settle any judicial review or action concerning the amount or character of any Partnership tax item(s);



(v) Intervene in any action brought by another Partner for judicial review of a final adjustment;

(vi) Take any other action not expressly permitted by this Article XIII(4) on behalf of the Partnership in connection with any administrative or judicial tax proceeding.

(c) In the event of any Partnership-level proceeding instituted by the Service pursuant to Sections 6221 through 6233 of the Code, the Tax Matters Partner shall consult with the Limited Partner regarding the nature and content of any action and defense to be taken by the Partnership in response to such proceeding. The Tax Matters Partner also shall consult with the Limited Partner regarding the nature and content of any proceeding pursuant to Sections 6221 through 6233 of the Code instituted by or on behalf of the Partnership (including the decision to institute proceedings, whether administrative or judicial, and whether in response to a previous Service proceeding against the Partnership or otherwise).

(d) the cost of attorneys and accountants filing and out-of-pocket expenses reasonably related to the execution of the duties and obligations of the Tax Matters Partner shall be deemed Partnership expenses. In the event the Partnership funds available for such expenses do not appear to be adequate, the Tax Matters Partner may condition its continuation of an administrative proceeding upon the receipt of assurances from the Limited Partner for the prompt reimbursement of such expenses not expected to be payable from available Partnership funds.

To the extent permitted by Article V(6), (7) and (8) hereof with respect to the General Partner and their Affiliates, and subject to all limitations and procedures set forth in said Article V(6), (7) and (8), the Partnership shall indemnify and hold harmless the Tax Matters Partner from and against any claim, loss, expense, liability, action or damage resulting from its acting or failing to take any action as the Tax Matters Partner pursuant to this Article XIII(4).

## ARTICLE XIV

### Miscellaneous Provisions

#### 1. Amendments to Agreement.

(a) Each Partner, including any additional Limited Partner and Substitute Limited Partner and additional General Partner and successor General Partner, shall become a signatory hereby by signing counterpart signature pages to this Agreement or an amendment to this Agreement or by granting a power of



By so signing, each Partner, including any additional Partner and successor General Partner, as the case may be, shall be deemed to have adopted, and to have agreed to be bound by, all the provisions of this Agreement.

(b) No amendments shall be adopted pursuant to the Article XIV(1), except in compliance with Article IV(3), unless its adoption does not, in the opinion of counsel for the Partnership, affect the limited liability of the Limited Partner under the Act or the status of the Partnership as a partnership for federal income tax purposes, or cause loss or recapture of the Credit.

(c) In making any amendments, there shall be prepared and timely filed for recordation by the General Partner all documents and certificates required to be prepared and filed under the Act and under the laws of any other jurisdiction of which the Partnership is then formed or qualified.

(d) The proposal of an amendment shall be made:

(i) by the General Partner, which shall give Notice to the Limited Partner which shall include (A) the text of the amendment, (B) a statement of the purpose of the amendment, and (C) an opinion of Counsel to the Partnership obtained by the General Partner (which counsel shall have been approved by the Limited Partner in advance) to the effect that such amendment is permitted by the Act and conforms with the requirements of the Act, such amendment will not affect the limited liability of the Limited Partner, such amendment will not adversely affect the classification of the Partnership as a partnership for federal income tax purposes, and such amendment will not result in any loss or recapture of the Credit, or

(ii) by the Limited Partner, which shall give Notice to the General Partner which shall include (A) the text of such amendment, (B) a statement of the purpose of the amendment, and (C) an opinion of Counsel to the Partnership to the effect that such amendment is permitted by the Act and conforms with the requirements of the Act, and such amendment will not adversely affect the classification of the Partnership as a partnership for federal income tax purposes.

(e) Within thirty (30) days after Notice is given pursuant to Article XIV(1)(d), each Partner shall consent to or reject, in writing, the proposed amendment. Amendments to this Agreement shall become effective only upon (i) the written consent of the General Partner and the Limited Partner (unless unanimous consent of all of the Partners with respect to any amendment is required by the Act), which consent may be



compliance with this Article XIV.

(f) The cost of the opinions described in this Article XIV(1) shall be borne by the Partnership.

2. Notice.

(a) The Notice address of the Partners shall be follows:

(i) if to the Partnership, at its principal place of business as provided in Article II hereof with a to:

Mintz, Levin, Cohn, Ferris, Glovsky  
and Popeo, P.C.  
One Financial Center  
Boston, Massachusetts 02111  
(telecopier # (617) 542-2241)  
ATTN: Howard E. Cohen, Esquire

(ii) if the General Partner, at the principal place of business of the Partnership with a copy to its counsel, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. the address furnished above.

(iii) if to Fannie Mae, at

Office of Multi-family Activities  
3900 Wisconsin Avenue  
Washington, D.C., 20016  
Attention: Martin D. Levine  
with a copy to: Office of General Counsel,  
(telecopier # (202) 752-4948)

(b) Any Partner may change its Notice address by providing Notice hereof to all other Partners.

3. Meetings. Meetings of the Partnership may be called by the General Partner or by the Limited Partner for any matters upon which the Partners may vote or for which consent of any Partner is required, as set forth in this Agreement. The calling of a meeting shall be made:

(a) by the General Partner, which shall give Notice to each Limited Partner which Notice shall include (i) a statement of the purposes of the meeting, and (ii) the date of the meeting which shall be a date no fewer than fifteen days and no more than thirty days after the date of the Notice;





(b) by the Limited Partner, which shall give Notice to the General Partner which Notice shall include a statement of the purposes of the meeting. No more than fifteen days after receipt of such Notice, the General Partner shall provide Notice to each Limited Partner in accordance with Article XIV(3)(a).

4. Action for Breach. The representations, warranties, covenants, agreements, and duties of the General Partner contained in this Agreement are being made in order to induce, and in consideration of, the Limited Partner's acquisition of its Interest. Upon the breach of any representation, warranty, covenant, agreement, or duty, the Limited Partner may pursue any available legal or equitable remedy against the General Partner without being required to dissolve the Partnership and notwithstanding the availability of any other remedy.

5. Consent and Voting. No vote or consent given by a Limited Partner shall ever be construed to make such Limited Partner liable as a general partner or cause such Limited Partner to be liable for Partnership obligations in excess of its Capital Contributions.

6. Survival of Representations. All continuing representations, warranties, and indemnifications contained herein shall survive the dissolution and final liquidation of the Partnership.

7. Entire Agreement. This Agreement and each agreement referenced herein contains the entire understanding between and among the parties and supersedes any prior understandings and agreements between and among them respecting the subject matter of this Agreement.

8. Applicable Law. It is the intention of the parties hereto that all questions with respect to the construction, enforcement, and interpretation of this Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with the laws of the Commonwealth of Massachusetts, without regard to principles of conflicts of laws.

9. Creditors. Except to the extent required under the Act and except for the obligations of the Partnership to the Management Agent and the Developer and the salaries, fees and other compensation, if any, provided as such for the Partners or their Affiliates herein, none of the provisions of this Agreement shall be for the benefit of or be enforceable by any creditor of the Partnership. No creditor who makes a nonrecourse loan to the Partnership may have or acquire at any time, as the result of making the loan, any direct or indirect interest in the profits, capital or property of the Partnership other than as a secured creditor.



10. Separability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules, and regulations. If any provision of this Agreement or the application thereof to any Person or circumstance shall, for any reason and to the extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law. In the event that any provision of this Agreement or application thereof shall be invalid or unenforceable, the Partners agree to negotiate (on a reasonable basis) a substitute valid or enforceable provision providing for substantially the same effect as the invalid or unenforceable provision.

11. Binding Effect. When entered into by the parties hereto, this Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective spouses, heirs, executors and administrators, personal and legal representatives, successors and assigns.

12. Effective Date. The date of this Agreement set in the heading hereof has been chosen solely for convenience reference, and the effective date of this Agreement for all purposes, including the allocation of profits and losses under Article VII, shall be the Admission Date.

13. Counterparts. This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

14. Section Titles. Section titles and any table of contents are for descriptive purposes only and shall not control or limit the meaning of this Agreement as set forth in the text.

15. Successor Statutes and Agencies. Any reference contained in this Agreement to specific statutory or regulatory provisions or to specific governmental agencies or entities shall include any successor statute or regulation, or agency or entity, as the case may be.

16. No Implied Waiver. No failure on the part of any Partner to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or exercise of any other right. No term or provision of this



indemnification. The indemnification authorized by Article V(7), Article V(8), and Article V(9) shall include, but not be limited to, the costs and expenses (including reasonable attorneys' fees) of the removal of any liens affecting any property of the indemnitee as a result of such legal action.

IN WITNESS WHEREOF, the undersigned Partners have hereunto affixed their signatures and seals of the date first above written.

### GENERAL PARTNER

Douglass Plaza Associates  
Phase One Limited Partnership

By: Robert M. Kargman  
Robert M. Kargman,  
Managing General Partner

By: Arthur D. Ullian  
Arthur D. Ullian,  
Managing General Partner

### LIMITED PARTNER

Federal National Mortgage  
Association

By: TRADL  
Title: VICE PRESIDENT

### WITHDRAWING LIMITED PARTNER

Robert M. Kargman  
Robert M. Kargman

37400



First Amendment to First Amended and  
Restated Certificate and Agreement of  
Limited Partnership  
Douglass Plaza Housing Co. I Limited Partnership





DOUGLASS PLAZA HOUSING COMPANY I LIMITED PARTNERSHIP

FIRST AMENDMENT TO  
FIRST AMENDED AND RESTATED CERTIFICATE AND AGREEMENT  
OF LIMITED PARTNERSHIP

This FIRST AMENDMENT TO FIRST AMENDED AND RESTATED CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP OF DOUGLASS PLAZA HOUSING COMPANY I LIMITED PARTNERSHIP is made and entered into as of June 28, 1990, by and among the undersigned parties.

Preliminary Statement

Douglass Plaza Housing Company I Limited Partnership (the "Partnership") was formed as a limited partnership under the Uniform Limited Partnership Act as adopted by the Commonwealth of Massachusetts, pursuant to that certain original certificate and agreement dated October 30, 1987, which was filed with the Secretary of State of the Commonwealth of Massachusetts on November 2, 1987, having Douglass Plaza Associates Phase One Limited Partnership, a Massachusetts limited partnership, as the general partner (the "General Partner"), and Concord Baptist Church and Concord Baptist Church Housing and Economic Development Corp., as special limited partners.

Pursuant to an Amendment to Certificate and Agreement of Limited Partnership Agreement, dated as of March 3, 1989 and filed with the Secretary of State of the Commonwealth of Massachusetts on March 28, 1989, Concord Baptist Church and Concord Baptist Church Housing and Economic Development Corp. each withdrew as special limited partners of the Partnership, and Robert M. Kargman was admitted as the sole limited partner of the Partnership.

Pursuant to a First Amended and Restated Certificate and Agreement of Limited Partnership (the "Partnership Agreement"), dated as of March 28, 1989 and filed with the Secretary of State of the Commonwealth of Massachusetts on April 4, 1989, Robert M. Kargman withdrew as the limited partner of the Partnership, the Federal National Mortgage Association was admitted as the sole limited partner of the Partnership (the "Limited Partner"), and the Certificate and Agreement of Limited Partnership, as amended to such date, was amended and restated in its entirety.

The existing Partnership Agreement contemplates that the Partnership, upon completion of the Project, will submit the Project to a condominium regime consisting of three primary condominium units. These primary condominium units were to be known as the "Condominium Flats Unit," the "Rental Unit," and



the "Townhouse Unit." The Condominium Flats Unit was to include the 33 individual residential apartment units intended to be subjected to a condominium regime to allow the individual sale of such units. The Rental Unit was to contain residential apartments, commercial space, community space, and a parking garage facility. The Townhouse Unit was expected initially to consist of land devoted to the future development of townhouses.

On January 31, 1990, the Partnership recorded with the Suffolk County Registry of Deeds in Boston, Massachusetts a Primary Master Deed submitting the Project to a condominium regime which differs from that described in the existing Partnership Agreement. The differences are as follows: The Condominium Flats Unit is referenced as the "Sales Unit;" the parking garage facility is not included as part of the Rental Unit, but instead has been established as a separate primary condominium unit, referenced as the "Garage Unit;" and the Townhouse Unit has not been included as part of the initial condominium regime, but may be added later as a fourth condominium unit.

The Partnership Agreement contemplated that the Partnership would receive Section 707 subsidy to replace federal Section 8 subsidy, which could not be utilized by the Partnership because the operation of the mixed-income housing project owned by the Partnership (the "Project") is partially funded by a Housing and Urban Development Grant ("HODAG") Loan, which restricts the Partnership's ability to utilize the Section 8 program. As a result of the fiscal crisis facing the Commonwealth, the Section 707 program was not fully funded by the legislature, and the Massachusetts Executive Office of Communities and Development ("EOCD") has agreed to replace the promised Section 707 subsidy with rent subsidies from another State program, the so-called Rental Development Action Loan ("RDAL") program. In addition, all entities receiving additional State assistance, such as RDAL assistance, are required to execute what is commonly referred to as the SHARP Option pursuant to which the Partnership will grant an option to the Massachusetts Housing Finance Agency ("MHFA") to purchase the low-income units in the Project in the event the Partnership fails to maintain the affordability of the low-income units.

By this First Amendment to the Partnership Agreement, the General Partner and the Limited Partner now desire to amend the Partnership Agreement to reflect certain revisions to the condominium structure of the Project as presently described in the Partnership Agreement and to revise the financing structure of the Project as described herein.

All capitalized terms used but not otherwise defined herein shall have the meanings given them in the Partnership Agreement.



NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby agree to amend the provisions of the Partnership Agreement as follows:

1. The definition of the term "Condominium Project," set forth in Article I(1)(hh) of the Partnership Agreement, is hereby amended as follows: (a) the reference to the "Condominium Flats Unit" at the end of Clause (i) of this definition is hereby deleted and the term "Sales Unit" is hereby substituted therefor; and (b) Clause (iii) of this definition is hereby deleted and the following language is hereby substituted therefor: "(iii) 33 of the parking spaces, held for sale, license and/or lease, and related easements for the use of common area space included in the Parking Garage Facility."

2. The definition of the term "Condominium Units," set forth in Article I(1)(ii) of the Partnership Agreement, is hereby supplemented by the addition of the following sentence at the end of the definition set forth in the Partnership Agreement: "Except as otherwise expressly provided herein, any reference herein to the Condominium Units shall be deemed to include the 33 parking spaces included as part of the Parking Garage Facility that will be designated as part of the Condominium Project and will be separately deeded as individual condominium units within the Garage Unit condominium structure."

3. The definition of the term "Master Deed," set forth in Article I(1)(kkkk) of the Partnership Agreement, is hereby deleted in its entirety and the following definition is hereby substituted therefor:

(kkkk) "Master Deed" means the "Primary Master Deed of the Condominium at Douglass Park," recorded with the Suffolk County Registry of Deeds in Boston, Massachusetts on January 31, 1990, pursuant to which the Project has been submitted to a condominium regime consisting of three primary condominium units to be known and referenced as the Sales Unit, the Rental Unit and the Garage Unit. A fourth primary condominium unit, to be known as the Townhouse Unit, may be added at a later date by an amendment to the Master Deed in accordance with the provisions of this Agreement.

4. The definition of the term "Parking Garage Facility," set forth in Article I(1)(nnnn) of the Partnership Agreement, is hereby deleted in its entirety and the following definition is hereby substituted therefor:



(nnnnn) "Parking Garage Facility" refers to the underground parking garage facility consisting of 146 parking spaces to be constructed as part of the Project. Upon Completion, the Parking Garage Facility will be designated as a separate primary condominium unit under the Master Deed, known as the "Garage Unit." The Garage Unit will be submitted to a condominium regime consisting of thirty four (34) separately deeded condominium units and common areas and elements. Thirty three (33) of such condominium units will be individual parking space units and the remaining condominium unit will include the balance of one hundred and thirteen (113) parking spaces. All units established within the Garage Unit condominium will have proportionate interests in the common areas and elements and will each bear a proportionate share of the costs of maintaining and operating the common areas and elements of the Parking Garage Facility. Easements for ingress, egress and movement through the Parking Garage Facility will be granted to each of the unit owners of the separate units established within the Garage Unit. For all purposes hereunder, the thirty-three (33) units of individual parking spaces will be considered part of the Condominium Project. The remaining unit, consisting of one hundred and thirteen (113) parking spaces and representing a controlling voting interest in the Garage Unit condominium, will be considered part of the Rental Project. Construction of the Parking Garage Facility will be funded in part with the proceeds of the HoDAG Loan (applied to the spaces included as part of the Rental Project) and the MHFA Condominium Loan (applied to the spaces included in the Condominium Project).

5. Clause (v) of the definition of the term "Rental Project," set forth in Article I(1)(ddddd) of the Partnership Agreement, is hereby deleted and the following language is hereby substituted therefor: "(v) 113 of the parking spaces and related easements for the use of common area space included in the Parking Garage Facility."

6. Article V(2)(d) of the Partnership Agreement is hereby deleted in its entirety and the following language is hereby substituted therefor:

(d) Lease as an entirety the Condominium Project, or lease any Condominium Unit (other than the interim rental of the 33 parking spaces included as part of the Condominium Project, pending the sale or other disposition of such parking spaces) while such Condominium Unit is owned by the Partnership.





7. Clause (i) contained in the definition of the term "Condominium Proceeds," set forth in Article VIII(1)(a) of the Partnership Agreement, is hereby deleted and the following language is hereby substituted therefor: "(i) the amount of cash disbursed or to be disbursed in connection with or as an expense of such sale, rental (but only in the case of the parking spaces included in the Condominium Project) or other disposition of the Condominium Units or the Condominium Project (including, without limitation, any condominium fees and other applicable interim operational expenses)...."

8. The definition of "Loan Documents" in Section 1(eeee) of Article I of the Partnership Agreement is hereby deleted in its entirety and the following definition is hereby substituted therefor:

(eeee) "Loan Documents" means, collectively the MHFA Loan Documents, the SHARP Loan Documents, the RDAL Loan Documents, the BRA Loan Documents, the HoDAG Loan Documents, the Letters of Credit, and any and all other documents executed by the Partnership in connection with the aforesaid Loan Documents;

9. The definition of "Mortgages" in Section 1(yyyy) of Article I of the Partnership Agreement is hereby deleted in its entirety and the following definition is hereby substituted therefor:

(yyyy) "Mortgages" means the mortgages on the Partnership Property, including the MHFA Mortgage, the HoDAG Mortgage, the RDAL Mortgage and the BRA Mortgage, each of which has been granted by the Partnership in favor of Mortgagees to secure the indebtedness under the Mortgage Notes, and if any such Mortgages are replaced or supplemented by subsequent financing and mortgages in accordance with this Agreement, such term shall refer to any such subsequent financing, mortgage, or mortgages;

10. The definition of "Mortgage Notes" in Section 1(zzzz) of Article I of the Partnership Agreement is hereby deleted in its entirety and the following definition is hereby substituted therefor:

(zzzz) "Mortgage Notes" means the mortgage promissory notes executed and delivered by the Partnership, including the MHFA Note, the SHARP Note, the HoDAG Note, the RDAL Note and the BRA Note, each of which evidences the Partnership's obligation to respectively repay all principal, and all accrued interest earned on, the MHFA



Loan, the SHARP Loan, the HoDAG Loan, the RDAL Loan and the BRA Loan, and if any such promissory note is amended, replaced or substituted in accordance with the terms hereof, such term shall also be deemed to refer to any such amended, supplemental or substituted promissory note or notes;

11. The definition of "Mortgagees" in Section 1(aaaaa) of Article I of the Partnership Agreement is hereby deleted in its entirety and the following definition is hereby substituted therefor:

(aaaaa) "Mortgagees" means, collectively, MHFA as the holder of the MHFA Mortgage and the RDAL Mortgage, the City as the holder of the HoDAG Mortgage, and the BRA as the holder of the BRA Mortgage, together with their respective successors and assigns in such capacities;

12. The definition of "Option Agreement" in Section 1(mmmmm) of Article I of the Partnership Agreement is hereby deleted in its entirety and the following definition is hereby substituted therefor:

(mmmmmm) "Option Agreement" means that certain SHARP Option Agreement, dated as of December 15, 1989, between the Partnership and MHFA, as amended by that certain Amendment to SHARP Option Agreement, dated as of December 15, 1989, between the Partnership and MHFA, pursuant to which the Partnership grants an option to MHFA to acquire Subject Units, as defined in the Option Agreement;

13. The definition of "SHARP Contract" in Section 1(jjjjjj) of Article I of the Partnership Agreement is hereby deleted in its entirety and the following definition is hereby substituted therefor:

(jjjjjj) "SHARP Contract" means that certain Amended and Restated State Housing Assistance for Rental Production Contract, dated as of December 15, 1989, as the same may be amended, by and among the Partnership, MHFA and EOCDC providing for housing subsidy loans to the Partnership up to the maximum annual amount of \$534,053;

14. The definition of "SHARP Loan Documents" in Section 1(111111) of Article I of the Partnership Agreement is hereby deleted in its entirety and the following definition is hereby substituted therefor:

(111111) "SHARP Loan Documents" means all documents evidencing, securing or incidental to the SHARP Loan, including without limitation the SHARP Contract, the SHARP Note and the Option Agreement and any and all amendments that made be made from time to time in the future with respect to the foregoing;



15. The definition of "SHARP Note" in Section 1(~~nnnnnnnn~~) of Article I of the Partnership Agreement is hereby deleted in its entirety and the following definition is hereby substituted therefor:

(~~nnnnnnnn~~) "SHARP Note" means that certain Substitute SHARP Subsidy Repayment Note of the Partnership to MHFA, dated as of December 15, 1989, as may be amended, which evidences the SHARP Loan;

16. The definition of "Regulations" in Section 1(~~aaaaaa~~) of Article I of the Partnership Agreement is hereby deleted in its entirety and the following definition is hereby substituted therefor:

(~~aaaaaa~~) "Regulations" means the Regulatory Agreement between the Partnership and MHFA; the MHFA enabling act; the National Housing Act; and the United States Housing Act of 1937; the Massachusetts Uniform Limited Partnership Act; the Massachusetts State Housing Assistance for Rental Production Act; the Massachusetts Rental Housing Development Action Loan Act; the Massachusetts Rental Assistance Program under M.G.L. Ch. 121B, Sec. 42.44A; and the rules and regulations promulgated under each of the foregoing, as each of the foregoing may be made, published or amended from time to time, but only to the extent applicable to the Partnership or the Project, as the case may be.

17. The following definitions are hereby inserted following the definition of "Rental Units" in Section 1(~~fffff~~) of the Partnership Agreement:

(~~fffff~~)(1) "RDAL Contract" means that certain Rental Housing Development Action Program Contract, dated as of December 15, 1989, as the same may be amended, between the Partnership, MHFA and EOCD providing for annual housing subsidy loans to the Partnership for up to 20 years.

(~~fffff~~)(2) "RDAL Loan" means the annual loans made to the Partnership from time to time pursuant to the RDAL Contract.

(~~fffff~~)(3) "RDAL Loan Documents" means all documents evidencing, securing or incidental to the RDAL Loan, including without limitation the RDAL Contract, the RDAL Note and the RDAL Mortgage, and all amendments that may be made from time to time in the future with respect to the foregoing.



(fffff)(4) "RDAL Note" means that certain RDAL Promissory, dated as of December 15, 1989, by the Partnership in favor of MHFA evidencing the RDAL Loan;

(fffff)(5) "RDAL Mortgage" means that certain Rental Housing Development Action Loan Program Mortgage, Securit Agreement and Assignment of Leases and Rents, dated as of December 15, 1989, by the Partnership in favor of MHFA securing the Partnership's obligations pursuant to the RDAL Loan;

18. Section 2(b) of Article V of the Partnership Agreement is hereby deleted in its entirety and the following language is hereby substituted therefor:

(b) Prior to the twentieth anniversary of Completion, effect a refinancing, encumbrance, mortgage (other than the initial Mortgages securing the MHFA, RDAL, BRA and HOAG Loans, and the conversion of certain of such initial Mortgages to the MHFA and BRA Condominium and Rental Mortgages), conveyance, or other disposition of all or a substantial portion of the Rental Project or the Rental Units (other than pursuant to the Option); provided, however, that the General Partner shall be authorized to increase the principal amount of the MHFA Rental Loan and/or SHARP Loan and/or RDAL Loan without consent of any other Partner if such increase (i) occurs prior to thirty-six months following Completion, (ii) does not exceed twenty percent (20%) of the original principal amount of the MHFA Rental Loan, the SHARP Loan, or the RDAL Loan, as the case may be, (iii) does not give rise to or create a recourse obligation of the Partnership or the Partners or a Partner Nonrecourse Debt (other than any corresponding increase in the Letters of Credit), (iv) does not otherwise result in a modification to the applicable Loan Documents, or in the addition of provisions in any documents or instruments delivered in substitution therefor, which materially adversely affect the Partnership and/or the Limited Partner, and (v) based upon the advice of Counsel, the Accountants, and the Reviewing Accountants, such increase would not adversely impact the allocations of depreciation and Credit to the Limited Partner at any time during the Credit Period (as defined in Code Section 42(f)(1));

19. Subclause (ii) of Section 1(a) of Article VIII of the Partnership Agreement is hereby deleted in its entirety and the following language is hereby substituted therefor:





(ii) the amount necessary for the payment of all debts and obligations of the Partnership arising from or otherwise related to such sale or other disposition of the Condominium Project and to which such sale or disposition is subject and which are otherwise then due (including, without limitation, any brokerage or sales commissions, the MHFA Condominium Loan, and the BRA Condominium Loan, but not including, however, the MHFA Rental Loan, the SHARP Loan, the RDAL Loan, the BRA Rental Loan, the HoDAG Loan or any Condominium Contributions or loans made to the Partnership by the Partners or their respective Affiliates); and

20. Subclause (ii) of Section 1(b) of Article VIII of the Partnership Agreement is hereby deleted in its entirety and the following language is hereby substituted therefor:

(ii) the amount necessary for the payment of all debts and obligations of the Partnership arising from or otherwise related to such sale or other disposition of the Rental Project or the Rental Units and to which such sale or disposition is subject and which are otherwise then due (including, without limitation, the MHFA Rental Loan, the SHARP Loan, the RDAL Loan and the BRA Rental Loan, and the HoDAG Loan, but not including, however, the MHFA Condominium Loan, the BRA Condominium Loan or any Development Advances, Operating Deficit Contributions or loans made to the Partnership by the Partners or their respective Affiliates).

21. The following language is hereby inserted as Section 20 of Article V:

20. Distribution of the Condominium Project to the General Partner. The Condominium Project (including all Condominium Units and the 33 separate individual parking space units in the Parking Garage Facility (the "Condominium Parking Spaces"), but excluding any portion of the Land or other Partnership Property devoted to the development of the Townhouses) shall be distributed to the General Partner in "as is" condition. In connection with the foregoing distribution, the General Partner agrees that it (i) is solely responsible for the payment of any and all conveyancing and closing costs and expenses (including, without limitation, any transfer taxes, recording fees, attorneys' fees, title insurance and survey costs) incurred in connection therewith, and shall indemnify the Partnership and the Limited Partner for any and all costs incurred in connection with such distribution, (ii) assumes all liability for any obligations with respect to any



indebtedness (the "Condominium Debt") related to the Condominium Project (including, but not limited to, the BRA Condominium Loan, the MHFA Condominium Loan and any indebtedness related to the Condominium Parking Spaces), (iii) is responsible for the release and discharge of the Partnership (and the Rental Project and all other Partnership assets) from any and all liability for the Condominium Debt, (iv) shall indemnify the Partnership from any and all liability for the Condominium Debt and from any other liability, claim, damage, loss, cost or expense related to the Condominium Project (in accordance with Article V(8)), (v) assumes all obligations concerning or related to the Condominium Project, the Land intended for development of Townhouses, and the Condominium Parking Spaces, including without limitation obligations to construct, maintain, insure, hold for sale, or otherwise to deal in or with any of the foregoing and shall indemnify the Partnership and the Limited Partner, in accordance with Article V(8), against all loss, costs, expenses, damages and claims, including attorneys fees, arising out of the Partnership's or General Partner's fulfilling or failing to fulfill such obligations; (vi) affirms its obligation under Article V.18 to offer to purchase the portion of the Land and other Partnership Property upon which it intends to construct the Townhouses, if, on the date that is fourteen (14) months after Completion of the Condominium Project (other than the Townhouses), the Partnership owns such Land and other Partnership Property and (vii) agrees that to satisfy the obligation described in the immediately preceding clause (vi) the General Partner shall cause the Partnership to create, prior to the start of any Townhouse construction, a fourth condominium unit under the Partnership's primary condominium master deed consisting of the Townhouses, which unit shall be deeded to the General Partner in "as is" condition. The General Partner hereby represents, warrants and covenants to the Partnership and the Limited Partner (A) that no document or instrument securing or evidencing any indebtedness (the "Rental Debt") related to the Rental Project (including, but not limited to, the BRA Rental Loan and the MHFA Rental Loan) provide that there shall be a default thereunder in the event of a default under any document or instrument securing or evidencing the Condominium Debt and (B) that no document or instrument securing or evidencing the Condominium Debt permits any recourse or default proceeding against the Rental Project (or any portion thereof) or any other Partnership assets in the event of a default under any such document or instrument and (C) that no document or instrument securing or evidencing the Rental Debt permits any recourse or default proceeding against the Condominium Project (or any portion thereof) or any assets of the General Partner (or any Affiliate thereof) in the event of a default under any such document or instrument, except to the extent any such liability of the General Partner may arise as a result of draws on the Letters of Credit securing the Rental Debt.



22. The following language is hereby inserted as Section 21 of Article V:

21. The General Partner hereby represents, warrants and covenants to the Partnership and the Limited Partner that (i) no Loan Document has been modified or bifurcated in a manner that has a material adverse effect on the Partnership, the Limited Partner or the investment of the Limited Partner in the Partnership, including, without limitation, the Limited Partner's interest in the Partnership's Net Cash Flow and the anticipated federal income tax benefits to be derived from its investment and (ii) with respect to the Letters of Credit furnished to secure the Condominium Debt, draws upon such Letters of Credit shall not directly or indirectly create a liability of the Partnership and no entity issuing such Letters of Credit is permitted to demand payment from or to institute default proceedings against the Partnership, the Rental Project or other Partnership assets in the event of a draw thereunder.

23. The first sentence in Section 3(a) of Article III of the Partnership Agreement is hereby deleted in its entirety and the following sentence is hereby substituted therefor: The Credit forecasted to be claimed by the Partnership for any taxable year of the Partnership (the "LIH Credit Sum") is \$813,585 for the taxable year ending December 31, 1990, and \$813,585 for each of the nine subsequent taxable years ending December 31, 1999.

24. The undersigned hereby agree that if the Accountants determine that the amount of Credit available to the Partnership is in excess of \$813,585 with respect to any taxable year, the Partnership Agreement shall be amended to substitute such higher Credit amount in Section 3(a) of Article III of the Partnership Agreement for \$813,585 as the LIH Credit Sum, and Section 3(e) of Article III of the Partnership Agreement shall not apply in connection with any such required amendment.

25. The General Partners represent that the sources and uses of funds for the Partnership, as of December 31, 1989 are as shown on Exhibit A, attached hereto and made a part hereof, and that pursuant to the foregoing Exhibit A (i) the General Partner has made or is obligated to make a Development Advance of \$846,141, which shall be repaid solely in accordance with the provisions of Section 3 of Article VIII and Section 2 of Article XII of the Partnership Agreement, (ii) the Partnership's federal income tax returns shall be prepared on a basis which is consistent with the costs reflected on Exhibit A, and (iii) the excess of the Working Capital of \$427,840 above Fannie Mae's legal and accounting costs of \$50,000



related to the negotiation and execution of this First Amendment shall be used to fund Operating Deficits with respect to the Rental Project, and shall not constitute Operating Deficit Contributions of the General Partner. The undersigned parties agree that if Accountants determine that as of December 31, 1989 the cost of the Rental Project exceeded the amount shown on Exhibit A, a new Exhibit A agreeable to the undersigned shall be prepared reflecting such increased costs and any related changes to the amount of the General Partner's Development Advances and shall be attached hereto as a substituted Exhibit A, and the Partnership's federal income tax returns shall be prepared in a manner consistent with such substituted Exhibit A.

26. Except as expressly amended by the terms and provisions hereof, the Partnership Agreement, including all Exhibits and Schedules thereto, shall remain unmodified and in full force and effect. This First Amendment to the Partnership Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties, hereto, notwithstanding that all the parties shall not have signed the same counterpart.

The last date certain upon which the Partnership is to dissolve is December 31, 2028.





IN WITNESS WHEREOF, the undersigned Partners have hereunto affixed their signatures and seals of the date first above written.

## GENERAL PARTNER

## LIMITED PARTNER

Douglass Plaza Associates  
Phase One Limited Partnership

Federal National Mortgage  
Association

By: *Robert M. Fargman*  
Robert M. Fargman,  
Managing General Partner

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: *Arthur B. Ullian*  
Arthur B. Ullian,  
Managing General Partner

By: *Lawrence R. Smith*  
Lawrence R. Smith,  
Managing General Partner

70870/89

Douglass Plaza Associates Phase One Limited Partnership  
151 Tremont Street  
Boston, Massachusetts

02111



IN WITNESS WHEREOF, the undersigned Partners have hereunto affixed their signatures and seals of the date first above written.

GENERAL PARTNER

Douglass Plaza Associates  
Phase One Limited Partnership

By: \_\_\_\_\_  
Robert M. Kargman,  
Managing General Partner

By: \_\_\_\_\_  
Arthur D. Ullian,  
Managing General Partner

By: \_\_\_\_\_  
Lawrence R. Smith,  
Managing General Partner

LIMITED PARTNER

Federal National Mortgage  
Association

By: MTD  
Title: VICE PRESIDENT



## COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

June 28, 1990

Then personally appeared before me Robert M. Kargman, as Managing General Partner of Douglass Plaza Associates Phase One Limited Partnership, as GENERAL PARTNER, and acknowledged the foregoing instrument to be his free act and deed and the duly authorized free act and deed of said GENERAL PARTNER.

Robert M. Kargman

Public

Notary

commission expires: 2-28-92

My

\*\*\*\*\*

## COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

June 28, 1990

Then personally appeared before me Arthur Ullian, as Managing General Partner of Douglass Plaza Associates Phase One Limited Partnership, as GENERAL PARTNER, and acknowledged the foregoing instrument to be his free act and deed and the duly authorized free act and deed of said GENERAL PARTNER.

Arthur Ullian

Public

Notary

commission expires: 5/31/92

My




COMMONWEALTH OF MASSACHUSETTS

Suffolk ss.

June 28, 1990

Then personally appeared before me Lawrence R. Smith, as Managing General Partner of Douglass Plaza Associates Phase One Limited Partnership, as GENERAL PARTNER, and acknowledged the foregoing instrument to be his free act and deed and the duly authorized free act and deed of said GENERAL PARTNER.

  
\_\_\_\_\_  
Notary Public

My commission expires: 7/28/97





DISTRICT OF COLUMBIA)

SS.

I, ELIZABETH M. FRENCH a Notary Public in and for the aforesaid jurisdiction, do hereby certify that on this 28<sup>th</sup> day of June, 1990, before me personally appeared N. J. Evans, the VP of Federal National Mortgage Association, a corporation organized and existing under the laws of the United States, known to me (or satisfactorily proven) to be the person who signed the foregoing instrument, and voluntarily acknowledged and swore that (i) he signed as his free and voluntary act on behalf of the Federal National Mortgage Association and (ii) he has due authority to sign in such capacity.

WITNESS my hand and official seal this 28<sup>th</sup> day of June, 1990.

NOTARY SEAL

Elizabeth M. French  
Notary Public  
My commission expires: 4/30/91







## Resume

The Boston Land Company  
151 Tremont Street  
Boston, Massachusetts 02111  
(617)451-5757

The Boston Land Company is a full service real estate development, syndication and management company headquartered in Boston. Since 1976, BLC has developed, owns and presently manages for its own account in excess of \$200 million of multi-family and mixed use properties in five states. The Boston Land Company developments have been acclaimed for their design, high quality construction, and comprehensive management services. The following is a list of BLC developments built or currently in process:

<u>Year Completed</u>	<u>Development</u>	<u>Location</u>	<u>Units</u>
1988	Katahdin Woods	Lexington, MA	128
	Stone Brook Farms	Burlington, MA	202
	Museum Square	Lawrence, MA	176
1978-1987	Stamford Green	Stamford, CT	90
	Maplewood	Poughkeepsie, NY	85
	The Greenhouse	Chelsea, MA	60
	Quaker Hill Place	Wilmington, DL	151
	Olympia Tower	New Bedford, MA	90
	Liberty Pines	Wrentham, MA	58
	Antrim Village	Antrim, NH	40
	Lincoln Green	Lincoln, NH	35
	Taber Mill	New Bedford, MA	151
	Peabody House	Peabody, MA	141
	The Wentworth	Lowell, MA	40
	Diamond Spring Gardens	Lawrence, MA	97
	Francis Cabot Lowell Mill I	Waltham, MA	150
	Francis Cabot Lowell Mill II	Waltham, MA	108
Construction Completion Sept. 1989	Douglass Plaza	Boston, MA	164
In Process	The Vineyard	Weston, MA	80



BRIEF DESCRIPTION OF PROJECTS  
DEVELOPED BY  
BOSTON LAND COMPANY

Stone Brook Farms

Burlington, MA

Located adjacent to the town common, Stone Brook Farms is a 202 unit mixed income garden apartment community completed by Boston Investment and Development Company in December, 1988. The development, over four years in the planning stages, was designed around a two acre wooded nature preserve and features colonial styled buildings, clubhouse with exercise facilities, an outdoor swimming pool with sundeck, and tennis court. Stone Brook Farms was financed in conjunction with the Massachusetts Housing Finance Agency.

Katahdin Woods

Lexington, MA

Katahdin Woods is a 128 unit mixed income garden apartment community completed in September, 1988 by Boston Investment and Development Company in partnership with AETNA Realty Investors, Inc. Katahdin Woods is the only privately financed mixed income development completed in Massachusetts utilizing the recently adopted federal low income housing tax credit program. Located adjacent to 33 acres of town conservation woods, the 5 garden style buildings at Katahdin Woods are terraced around the rolling 12 acre site, and feature a clubhouse with exercise facility, pool and nature trails.

Museum Square

Lawrence, MA

Museum Square is the centerpiece of a \$50 million downtown revitalization effort currently underway in Lawrence. Built in 1919 as a woolen warehouse, the building was completely renovated in 1988 with the addition of a penthouse level on top of the original roof. The 176 units at Museum Square feature ten foot ceilings, expansive windows, and the original columns. A full service health club and rooftop pool were also added. Financed by the Massachusetts Housing Finance Agency, Museum Square also was awarded a \$4.2 million Housing Development Action Grant from the U.S. Department of Housing and Urban Development.





### Douglass Plaza

### Boston, MA

In partnership with the Concord Baptist Church, one of the largest minority sponsored religious institutions in Boston, BIDC is currently developing a 155 unit mixed-income development in lower Roxbury. The development will feature 122 rental apartments, 33 condominiums, a 146 space underground parking garage, and approximately 6,500 square feet of retail space. Located on a former urban renewal parcel of the Boston Redevelopment Authority, Douglass plaza will feature many architectural elements found in the neighboring Victorian era buildings, including: detailed bay windows, mansard rooflines, and traditionally patterned brickwork. The development received a \$966,000 Community Development Action Grant from the Massachusetts Executive Office of Communities and Development for reconstruction of the streets adjacent to the buildings. Completion of Douglass Plaza is expected in September 1989.

### Stamford Green

### Stamford, CT

Stamford Green is a new, mid-rise development providing 90 units of elderly housing in the West Side Area of Stamford, Connecticut. Beginning at seven stories and then stepping down to five and three stories, the development contains a library, hobby room, and community room overlooking a landscaped rear courtyard. Stamford Green is located on West Main Street near Greenwich, CT, and near shopping, community facilities and major transportation networks.

### Quaker Hill Place

### Wilmington, DE

Quaker Hill Place provides 151 units of elderly housing in the Quaker Hill section of downtown Wilmington. The Quaker Hill historic area is centered around the old Quaker Hill Meeting House and park. Shopping and community facilities, churches, restaurants and the new transportation center are all within walking distance of Quaker Hill Place.

### Olympia Tower

### New Bedford, MA

Olympia Tower is a 90 unit housing complex at the east end of the downtown New Bedford pedestrian mall, within the downtown historic district of the City. The site contained a long vacant four-story office building and a two-story garage. BIDC proposed to the City that the property be recycled into housing by demolition of the garage, leaving only the historic facade. A ten-story building was constructed incorporating the historic facade, and the four-story historic building was recycled into housing. The development overlooks the New Bedford harbor and Buzzard's Bay.



### The Greenhouse

Chelsea, MA

Chelsea Restoration Corporation, a non-profit group, invited BIDC to attempt to save a HUD-insured project on the verge of being defunded for lack of feasibility. Because of high land costs, BIDC relocated and redesigned this 80-unit project by acquiring an existing abandoned garage, adding two stories, and attaching a six-story new construction building to the rehabilitation. Today, the amenities of the new development include a community room, greenhouse, and roof deck with views of Boston Harbor.

### Maplewood

Poughkeepsie, N.Y.

The City invited BIDC to rehabilitate this historic complex of buildings which had suffered major fire damage and were badly deteriorated from years of vacancy and neglect. BIDC rehabilitated four historic buildings in accordance with U.S. Department of the Interior Standards and constructed a three-story building in keeping with the historic, campus-like setting. The development contains a community library, community building and an office building for some relocated local social service agencies.

### Antrim Village

Antrim, N.H.

Antrim Village is located in the town of Antrim in southwestern New Hampshire on a site which affords a vista of rolling hills and the surrounding countryside, and is within easy walking distance of the supermarket, library, town hall and shopping. The project has 40 units and a community building to serve its elderly residents.

### Lincoln Green

Lincoln, N.H.

A five-acre wooded site provides a beautiful setting for Lincoln Green. Elderly residents are within walking distance of the small town of Lincoln, New Hampshire. Lincoln is the home of Loon Mountain, a major ski resort close to Waterville Valley. The development contains 35 units and community spaces with an open hearth, kitchen and recreation room overlooking a landscaped patio.



### Liberty Pines

### Wrentham, MA

Liberty Pines is located on a wooded, 3-acre site within the Town of Wrentham, MA. Primarily a residential community, Wrentham is close to both Boston and Providence, Rhode Island. The development provides 58 elderly units and multi-purpose community spaces, and is located within easy walking distance to the downtown area.

### Taber Mill

### New Bedford, MA

Built in 1906, the Taber Mill complex today provides 150 units of housing for senior citizens. Because the original mill building was too deep to provide efficiently designed housing units, our creative solution demolished selected portions of the original structure to create three courtyards, each landscaped to provide open space for the residents. A separate entry serves a multi-purpose meeting room and a dining area, and provides facilities for a community nutrition program servicing the needs of residents from the surrounding neighborhood.

### Peabody House

### Peabody, MA

Peabody House, a seven story building in downtown Peabody, provides 140 units of elderly housing of pleasing design. The Peabody House's landscaped grounds, glassed community spaces and large outdoor patio are well used by the active resident body.

### The Wentworth

### Lowell, MA

Located at the entrance to the Lowell Heritage State Park and across from City Hall, the Wentworth provides 40 units of housing and 6,500 square feet of commercial space. The Wentworth building was badly damaged when the attached YMCA building was torn down in order to make way for the Heritage State Park. The rehabilitation of this early 19th century historic building followed Department of Interior standards for restoring the slate mansard roof, original window design, and exterior facade. A traditional ice cream parlor with outdoor tables and umbrellas occupies commercial space on the first floor.



### Diamond Spring Gardens

Lawrence, MA

Diamond Spring Gardens represents the first time that the Boston Area Office of HUD allowed two new floors to be built upon an existing structure. Adding two stories to this long-vacant factory, for years an unattractive nuisance, and creating two large atriums, gave a quality of interior spaciousness to this rehabilitation. Amenities provided by the development include a kitchen and dining room, library, arts and crafts room, recreation rooms, lounge, exercise room and beauty salon.

### Francis Cabot Lowell Mill

Waltham, MA

Dating back to 1813, the Francis Cabot Lowell Mill complex is designated as a National Historic Landmark as the oldest integrated textile manufacturing company in the United States and the birthplace of American power weaving. Selected under HUD's Demonstration Rehabilitation program and HUD Neighborhood Strategy Areas Program, BIDC converted the mill complex to 258 units of elderly housing. Because of the project's extraordinary historic significance, the National Endowment for the Humanities together with private contributors have established a museum of early industrial Waltham within the original mill boiler house. The development also includes numerous community rooms, hobby rooms, a large dining room, outdoor landscaped areas, and offices for the Waltham Council on Aging and the Waltham Historical Society.











ATTACHMENT D

U.S. Department of Housing and Urban Development

Boston Regional Office, Region 1  
Boston Federal Building, 3rd Floor  
10 Causeway Street  
Boston, MA 02222-1092

December 4, 1987

Robert M. Kargman  
Douglass Plaza Housing Company I  
Limited Partnership  
151 Tremont Street  
Boston, MA 02111

Subject: Douglass Plaza Apartments  
Columbus Ave., Boston

Dear Mr. Kargman:

We are pleased to advise you that the Affirmative Fair Housing Marketing Plan (AFHMP) that you submitted for the project is approved as of the date of this letter.

As you know, the primary purpose of the affirmative marketing program is to promote a condition in which individuals of similar income levels in the same housing market area have available to them a like range of choices in housing, regardless of the individual's race, color, religion, sex or national origin. Accordingly, the Department has identified procedures which are required to be followed pursuant to the goals of the program, the Department's regulations, and your approved Plan.

1. The approved AFHMP must be available for public inspection in your office.
2. The HUD Fair Housing Poster is required to be prominently displayed in all offices in which sales or rental activity takes place; displayed from the start of construction; and properly maintained throughout the construction and sales/rental period.
3. You must ensure that all advertising material related to this housing contains the Equal Opportunity logo, slogan, or statement, in conformance with the HUD Fair Housing Advertising Regulation (24 CFR Part 109) for Fair Housing. Copies of materials sent to community contacts must be submitted to this office.

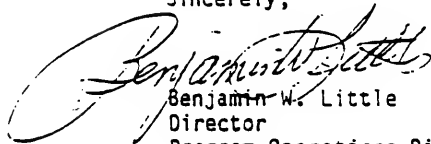


4. No later than 90 days prior to engaging in marketing activities, you should notify the FHEO Division either in writing or by phone of the dates on which (a) you plan to start initial marketing activities; (b) accept applications; and (c) start initial occupancy. At this time, a Preoccupancy Conference may be scheduled.
5. You should begin diligent marketing activities in accordance with the agreement 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.
6. You must collect and maintain information relating to rental activity, including documentation connected with the outreach program, data by race, ethnicity and gender for both occupants and applicants (Executive Order 11063 and 24CFR 1.4 (b) 100 and 108.

We encourage you to make every possible good faith effort to carry out the provisions and fulfill the objectives of your AFHMP. If you have any questions or need assistance, please call Mr. Bruce Jones, Equal Opportunity Specialist (617) 565-5323.

We have received a MBE/WBE plan for this HDG Project.

Sincerely,



Benjamin W. Little  
Director  
Program Operations Division

Enclosure



# LETE FORM AND SUBMIT TO: FAIR HOUSING AND EQUAL OPPORTUNITY DIRECTOR/SPECIALIST, AREA/SERVICE OFFICE

## 1. INTRODUCTION:

The Affirmative Fair Housing Marketing Regulations require that each applicant subject to these Regulations carry out an affirmative program to assist barriers or tenants of all minority and non-minority groups in the housing that the applicant is developing. These groups include whites and members of minority groups: Blacks (Non-Hispanic), American Indian/Alaskan Native, Hispanics and Asian/Pacific Islanders in the State of Massachusetts (SMA) or housing market area who may be subject to housing discrimination on the basis of race, color, religion, sex, origin.

## 2. APPLICATION AND PROJECT IDENTIFICATION:

A. APPLICANT'S:		B. PROJECT OR APPLICATION NUMBER	
NAME Douglass Plaza Housing Co. - Limited Partnership		NUMBER OF UNITS 121	
ADDRESS (Include City, State and ZIP Code) 151 Tremont Street, Boston, MA 02111		PRICE OR RENTAL RANGE OF UNITS: FROM \$ 572.00 TO \$ 1,157.00	
TELEPHONE NUMBER (617) 451-5757		D. FOR MULTIFAMILY HOUSING ONLY: <input type="checkbox"/> ELDERLY <input checked="" type="checkbox"/> NON-ELDERLY	
C. PROJECT		E. APPROXIMATE STARTING DATES	
NAME Douglass Plaza Apartments		ADVERTISING \$-89 OCCUPANCY \$-89	
LOCATION/ADDRESS (Include City, State and ZIP Code) Columbus Avenue, Boston, MA		F. NAME OF MANAGING/SALES AGENT Douglass Plaza Management Company	
COUNTY: Suffolk CENSUS TRACT: 8806		ADDRESS (Include City, State and ZIP Code) 151 Tremont St., Boston, MA 02111	

## 3. TYPE OF AFFIRMATIVE MARKETING PLAN

☐ Project Plan: ☐ Annual Plan (for single family scattered site units). NOTE: A separate Annual Plan must be developed for each type of census which the housing is to be built.  
☐ Minority Area ☐ White (non-minority) Area ☒ Mixed Area (with 22 % minority residents)

## 4. DIRECTION OF MARKETING ACTIVITY

Indicate below which group(s) in the housing market area are least likely to apply for the housing because of its location and other factors without a reason effort.

☐ White (Non-Hispanic) ☒ Black (Non-Hispanic) ☐ American Indian or Alaskan Native ☐ Hispanic ☒ Asian or Pacific Islander

## 5. MARKETING PROGRAM:

### A. COMMERCIAL MEDIA

Check the media to be used to advertise the availability of this housing.

☒ Newspaper(s)/Publication(s) ☐ Radio ☐ TV ☐ Billboards ☐ Other (Specify)

NAME OF NEWSPAPER, RADIO OR TV STATION (1)	RACIAL/ETHNIC IDENTIFICATION OF READERS/AUDIENCE (2)	SIZE/DURATION OF ADVERTISING (3)
Boston Globe	White, Black, Hispanic, Asian	1 col X 6"/1
Banner	Black	3 col X 3"/1
El Mundo	Hispanic	3 col X 3"/1
Sampan	Asian	3 col X 3"/1
South End News	White, Black, Hispanic, Asian	3 col X 3"/1

## B. BROCHURES, SIGNS AND HUD'S FAIR HOUSING POSTER:

(1) Will brochures, leaflets, or handouts be used to advertise? ☐ Yes ☐ No. If yes, attach a copy or submit when available. (2) For project ads indicate sign size 4' x 8'; Logo type size 12' x 12'. Attach a photograph of project sign or submit when available. (3) HUD's Fair Housing Poster must be conspicuously displayed wherever sales/rental and showings take place. Fair Housing Posters will be displayed in the ☒ Sales/Rental ☐ Real Estate Office(s); ☐ Model Unit(s); ☐ Other (Specify)

## C. COMMUNITY CONTACTS

To further inform the group(s) least likely to apply about the availability of the housing, the applicant agrees to establish and maintain contact with organizations listed below that are located in the housing market area or SMA. If more space is needed attach an additional sheet. Notify HUD-FH changes in this list. Attach a copy of correspondence to be mailed to these group(s)/organizations. (Provide all requested information.)

NAME OF GROUP/ ORGANIZATION (1)	RACIAL/ETHNIC IDENTIFICATION (2)	APPROXIMATE DATE OF CONTACT OR PROPOSED CONTACT (3)	PERSON CONTACTED OR CONTACTED (4)
Oxbury Multi Service Center	Black	7-80	
United South End Settlements	Black	7-80	
Oxton Aging Concerns	Mixed	7-80	
Clubs Hispania	Hispanic	7-80	
Oxton Indian Council	Native American	7-89	

ADDRESS AND TELEPHONE NUMBER (5)	METHOD OF CONTACT (6)	INDICATE THE SPECIFIC FUNCTION GROUP ORGANIZATION WILL UNDERTAKE TO IMPLEMENT THE MARKETING PROGRAM (7)
427-3470	Letter/Personal	Housing Referral
236-8668	Letter/Personal	Housing Referral
266-2257	Letter/Personal	Housing Referral
522-8917	Letter/Personal	Housing Referral
232-0343	Letter/Personal	Housing Referral

Chinese Econ. Dev. Council

Asian

3-89

482-1011

Letter/Personal

Housing Referral





### 8. FUTURE MARKETING ACTIVITIES (Renter Lease Only)

Check the (check(s)) that best describe future marketing activities to the vacancies as they occur after the project has been initially occupied.

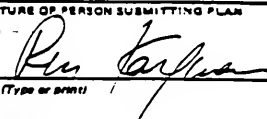
- ☒ Newspapers/Publications   
 ☐ Radio   
 ☐ TV   
 ☒ Brochures/Leaflets/Handouts   
 ☐ Site Signs  
☒ Community Contacts   
 ☒ Other (Specify) Boston Housing Authority (Section 8 Units)

### 7. EXPERIENCE AND STAFF INSTRUCTIONS

- A. Indicate any experience in marketing housing to the group(s) identified as least likely to occupy ☒ Yes ☐ No **SEE ATTACHMENT**  
 B. Indicate training to be provided to staff on Federal, state and local fair housing laws and regulations, as well as the AFHM Plan. Attach a copy of instructions to staff regarding fair housing.

### 8. ADDITIONAL CONSIDERATIONS:

8. By signing this form, the applicant agrees, after appropriate consultation with HUD, to change any part of the plan covering a multifamily project to ensure compliance with Section 200.520 of HUD's Affirmative Fair Housing Marketing Regulations.

FOR FHEO'S USE ONLY		SIGNATURE OF PERSON SUBMITTING PLAN	
APPROVAL BY	DISAPPROVAL BY		
SIGNATURE <i>Bernard L. Hittler</i>	SIGNATURE	 NAME (Type or print) Robert M. Fargman	
NAME (Type or print) <i>Bernard L. Hittler</i>	NAME (Type or print)		
TITLE <i>Director, F&amp;D</i>	TITLE	TITLE AND COMPANY Douglass Plaza Housing Company I Limited Partnership	
DATE <i>12/4/87</i>	DATE	DATE December 2, 1987	



Douglas Plaza Apartments  
Affirmative Fair Housing Marketing Plan  
Attachment 1

7) Experience of Developer and Management Agent in marketing housing groups least likely to apply:

Boston Investment and Development Company has developed fourteen (14) Section 8 Assisted projects of which thirteen (13) are managed Coastal Property Management Corporation. The the Developer and Management Agent are familiar with Federal and State Equal Housing / Affirmative Action requirements and have always made a concerted effort to comply with all such requirements. In marketing the current portfolio, the Developer and Management Agent have consistently gone above and beyond HUD requirements in an effort to outreach to those least likely to apply for available housing. The current marketing strategy includes an outreach program through community social service agencies, churches and neighborhood committees, as well as marketing materials and advertising, which include the Equal Housing Opportunity logo. Print advertising is placed in both mainstream and minority newspapers. In addition to the above, the Management Agent provides Tenant Services and Fair Housing training to staff and residents and relevant associations to promote harmonious race relations throughout all developments.



COASTAL PROPERTY MANAGEMENT CORPORATION

Staff Instructions for Affirmative Fair Housing Marketing

1) Community Outreach

a) Identify public and private agencies and organizations, area churches, private industries and individuals most likely to have good communication links to minority persons and groups.

b) Mail out informational brochures with personalized cover letter inviting applications to all sources identified in accordance with HFA timetable. (If no timetable is specified, the Director of Operations will establish a timetable which insures that sources are contacted prior to the commencement of general rent-up.)

c) Make follow-up phone calls to key agencies and organizations.

d) Invite agency representatives to tour the development and view model apartments.

e) Explain rent-up procedures to agencies.

f) Maintain a detailed log of all contacts and results. (see attached)

2) Advertising

a) Place ads in minority publications in advance of ads in general newspapers. (Request translation for ads placed in Non-English publications)

b) Display "Equal Housing Opportunity" logo in all advertisements, brochures, etc.

c) Review need to re-advertise within 60 days.

d) Insure that renderings and signage represent different ethnic and racial groups.

3) General

1) Display Fair Housing Poster in a conspicuous location in Rental Office.

2) Maintain detailed applicant log as prescribed by Coastal Property Management or Massachusetts Housing Finance Agency. Submit Weekly Marketing Reports to the Director of Operations, detailing results of Equal Opportunity Outreach.

3) Submit all required Monthly Logs to Central Office and Quarterly Reports to MHFA.

4) Attached is the Affirmative Fair Housing Marketing Plan for your site and all applicable federal, state and local laws and regulations. Rental Managers are required to be familiar with these materials. If additional information is required, forward requests to the V.P. of Operations.



# COASTAL PROPERTY MANAGEMENT CORP. AFFIRMATIVE FAIR MARKETING LO

MONTH: \_\_\_\_\_ 19

PROPERTY NAME: Douglas Plaza Apartments

MANAGER'S NAME: \_\_\_\_\_

## 1) Telephone/Personal Contacts:

Organization	Contact Person	Telephone	Date

## 2) Special Activities

Description	Outreach Group	Attendance

## 3) Brochure Mailings

Organization	Contact Person	Address	Date

## 4) Other (describe below)

\_\_\_\_\_

\_\_\_\_\_

-- 5) Attach Tear Sheets of all advertising run during period.

## RESULTS:

Majority Goal	65	%	Beginning Actual	%	Ending Actual	%
Minority Goal	35	%	Beginning Actual	%	Ending Actual	%







# COASTAL

PROPERTY MANAGEMENT CORP.

## MEMORANDUM

TO: All Massachusetts Site Managers  
FROM: Bruce Einhorn, Senior Vice President  
DATE: August 31, 1987  
RE: Compliance with Fair Housing Laws

This memorandum is to reiterate Coastal Property Management Corporation's policy regarding compliance with federal, state and local Fair Housing and Anti-Discrimination laws. It is the policy of our company not to discriminate in the leasing of apartments or sale of property on the basis of race, color, religious creed, marital status, military status, handicap, children, national origin, sex, age, ancestry, sexual preference or source of income.

The only exception to the above is in the leasing of Section 8 subsidized apartments which, by federal statute, must be leased to elderly persons over age 62 or those persons who are handicapped or disabled.

Enclosed, please find brochures from the Massachusetts Commission Against Discrimination (MCAD) and City of Boston Fair Housing Commission. Please review this material and retain the brochures with this memorandum in your Affirmative Fair Housing file.

In addition, please sign the attached form certifying that you received this memo and send it back to David Spiher's attention at Central Office. Thank you for your cooperation.



To see that each individual, regardless of his/her race, color, religious creed, marital status, military status, handicap, children, national origin, sex, age, ancestry, sexual preference or source of income shall have equal access to housing; and to encourage and bring about mutual understanding and respect among all individuals in the City by the elimination of prejudice, intolerance, bigotry and discrimination in the area of housing.

## How Can I Help?

Fairness in housing is the law and is everyone's right. If you would like to help your community learn about fair housing, you could:

- arrange to have a speaker from BHHC
- become informed about fair housing law
- write letters to the editor of your community newspaper to let people know that their neighbors support fair housing
- inform potential discriminators that discrimination is against the law and subject to enforcement penalties
- contact your elected representatives to tell them that you support fair housing
- encourage victims of discrimination to file their complaints

# What is Boston's Fair Housing Law?

The Boston  
Fair Housing  
Commission





# What is the Boston Fair Housing Commission?

Established by City Ordinance in 1982, the Boston Fair Housing Commission is an agency of Boston City government charged with the enforcement of the Fair Housing Law.

## Investigations

The Boston Fair Housing Commission investigates complaints brought by individuals, groups or agencies who feel that discrimination has occurred. Trained investigators analyze information gathered from interviews and records to determine if there is a "probable cause" or likelihood of housing discrimination.

Throughout the investigation those charged with the responsibility are given ample opportunity to present their side of the case, and to resolve the matter directly with the person or persons who brought the complaint.

In the majority of cases where a full investigation is conducted, the complaint is resolved through conciliation or mediation. In some instances where conciliation or mediation has failed, the Commission has the authority to file a complaint with the Superior Court, or to bring a suit for damages or to bring a suit for injunctive relief.

## Housing Law Enforcement

When a housing discrimination complaint cannot be resolved through conciliation or mediation, the Commission may file a complaint with the Superior Court, or to bring a suit for damages or to bring a suit for injunctive relief.

The Commission also has the authority to bring a suit for damages or to bring a suit for injunctive relief.

## Compliance

Through such programs as Alternative Fair Housing Plan reviews, the Boston Fair Housing Commission monitors housing programs in Boston to ensure compliance with the Fair Housing Law.

The Commission also sponsors auditing programs in which "testers" are assigned to audit or "test" real estate transactions in Boston's neighborhoods. The auditing program provides information on the level of discrimination and produces evidence of its occurrence.

## Education

The Boston Fair Housing Commission offers a range of activities to educate the public about fair housing:

- training programs and films for City Staff and community agencies
- publication of reports and studies
- mailings in response to fair housing issues
- neighborhood hearings
- public service announcement on radio and television

## Coordination

The Fair Housing Commission maintains strong formal and informal ties to public and private agencies concerned with fair housing through regular communications, joint programs, advocacy, formal memoranda of agreement, and mutual support. Among the groups with which the Fair Housing Commission works most closely are:

- Boston Police Department Community Disorders Unit
- Neighborhood Housing Conditions in nonincorporated Boston neighborhoods and communities including Dorchester, Jamaica Plain, Hyde Park, and the South End
- The Greater Boston Real Estate Board
- The Boston Housing Authority
- U.S. Department of Housing and Urban Development

## What is Prohibited?

It is against the law to do any of the following based on race, color, religion, creed, marital status, military status,

- deny availability
- discriminate in terms of conditions
- treat disparately
- deny professional real estate services
- discriminate in advertising
- discriminate in written or oral inquiries or records
- redline
- blockbust
- interfere with the free exercise of an individual's civil rights

## What is Allowed?

- The Greater Boston Real Estate Board has declared the following standards for tenant selection:

"Simply stated, there are only two criteria by which you should judge someone seeking or using rental housing: 1) ability to pay the rent and 2) ability to respect the rights of others . . ."

- Landlords, sellers and agents may adopt any reasonable standard as long as that standard is applied uniformly to every applicant and the protected characteristics are not considered in the selection process

## How Can I File A Complaint?

Discrimination in housing can be very subtle. If you have any questions in your mind about a possible case of housing discrimination, come to our offices in Room 957 of Boston City Hall or call:

725-4408



Executive Order 11063  
Equal Opportunity in Housing

This Order requires all Federal departments and agencies to take all action necessary and appropriate to prevent discrimination because of race, color, creed, or national origin in the sale or rental of residential property and related facilities owned or operated by the Federal Government or provided with Federal financial assistance. The Order also prohibits discrimination in lending practices insofar as such practices relate to loans insured or guaranteed by the Federal Government.

[27 Fed. Reg. 11577]

Whereas the granting of Federal assistance for the provision, rehabilitation, or operation of housing and related facilities from which Americans are excluded because of their race, color, creed, or national origin is unfair, unjust, and inconsistent with the public policy of the United States as manifested in its Constitution and laws; and

Whereas the Congress in the Housing Act of 1949 has declared that the general welfare and security of the Nation and the health and living standards of its people require the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family; and

Whereas discriminatory policies and practices based upon race, color, creed, or national origin now operate to deny many Americans the benefits of housing financed through Federal assistance and as a consequence prevent such assistance from providing them with an alternative to substandard, unsafe, unsanitary, and overcrowded housing; and

Whereas such discriminatory policies and practices result in segregated patterns of housing and necessarily produce other forms of discrimination and segregation which deprive many Americans of equal opportunity in the exercise of their unalienable rights to life,





liberty, and the pursuit of happiness: and

Whereas the executive branch of the Government, in faithfully executing the laws of the United States which authorize Federal financial assistance, directly or indirectly, for the provision, rehabilitation, and operation of housing and related facilities, is charged with an obligation and duty to assure that those laws are fairly administered and that benefits thereunder are made available to all Americans without regard to their race, color, creed, or national origin:

Now, therefore, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:

## PART I—PREVENTION OF DISCRIMINATION

Section 101. I hereby direct all departments and agencies in the executive branch of the Federal Government, insofar as their functions relate to the provision, rehabilitation, or operation of housing and related facilities, to take all action necessary and appropriate to prevent discrimination because of race, color, creed, or national origin—

(a) in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are—

(i) owned or operated by the Federal Government, or

(ii) provided in whole or in part with the aid of loans, advances, grants, or contributions hereafter agreed to be made by the Federal Government, or

(iii) provided in whole or in part by loans hereafter insured, guaranteed, or otherwise secured by the credit of the Federal Government, or

(iv) provided by the development or the redevelopment of real property purchased, leased, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under a loan or grant contract hereafter entered into; and

(b) in the lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans hereafter insured or guaranteed by the Federal Government.

Sec. 102. I hereby direct the Housing and Home Finance Agency and all other executive departments and agencies to use their good offices and to take other appropriate action permitted by law, including the institution of appropriate litigation, if required, to promote the abandonment of discriminatory practices with respect to residential property and related facilities heretofore provided with Federal financial assistance of the types referred to in Section 101(a) (ii), (iii), and (iv).

## PART II—IMPLEMENTATION BY DEPARTMENTS AND AGENCIES

Sec. 201. Each executive department and agency subject to this order is directed to submit to the President's Committee on Equal Opportunity in Housing established pursuant to Part IV of this order (hereinafter sometimes referred to as the Committee), within thirty days from the date of this order, a report outlining all current programs administered by it which are affected by this order.

Sec. 202. Each such department and agency shall be primarily responsible for obtaining compliance with the purposes of this order as the order applies to programs administered by it; and is directed to cooperate with the Committee, to furnish it, in accordance with law, such information and assistance as it may request in the performance of its functions, and to report to it at such intervals as the Committee may require.

Sec. 203. Each such department and agency shall, within thirty days from the date of this order, issue such rules and regulations.



adopt such procedures, policies, and make such exemptions and exceptions as may be consistent with law and necessary or appropriate to effectuate the purposes of this order. Each such department and agency shall consult with the Committee in order to achieve such consistency and uniformity as may be feasible.

### PART III—ENFORCEMENT

SEC. 301. The Committee, any subcommittee thereof, and any officer or employee designated by any executive department or agency subject to this order may hold such hearings, public or private, as the Committee, department, or agency may deem advisable for compliance, enforcement, or educational purposes.

SEC. 302. If any executive department or agency subject to this order concludes that any person or firm (including but not limited to any individual, partnership, association, trust, or corporation) or any State or local public agency has violated any rule, regulation, or procedure issued or adopted pursuant to this order, or any nondiscrimination provision included in any agreement or contract pursuant to any such rule, regulation, or procedure, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation, and persuasion unless similar efforts made by another Federal department or agency have been unsuccessful. In conformity with rules, regulations, procedures, or policies issued or adopted by it pursuant to Section 203 hereof, a department or agency may take such action as may be appropriate under its governing laws, including, but not limited to, the following:

It may—

(a) cancel or terminate in whole or in part any agreement or contract with such person, firm, or State or local public agency providing for a loan, grant, contribution, or other Federal aid, or for the payment of a commission or fee;

(b) refrain from extending any further aid under any program administered by it and affected by this order until it is satisfied that the affected person, firm, or State or local public agency will comply with the rules, regulations, and procedures issued or adopted pursuant to this order, and any nondiscrimination provisions included in any agreement or contract;

(c) refuse to approve a lending institution or any other lender as a beneficiary under any program administered by it which is affected by this order or revoke such approval if previously given.

SEC. 303. In appropriate cases executive departments and agencies shall refer to the Attorney General violations of any rules, regulations, or procedures issued or adopted pursuant to this order, or violations of any nondiscrimination provisions included in any agreement or contract, for such civil or criminal action as he may deem appropriate.

The Attorney General is authorized to furnish legal advice concerning this order to the Committee and to any department or agency requesting such advice.

SEC. 304. Any executive department or agency affected by this order may also invoke the sanctions provided in Section 302 where any person or firm, including a lender, has violated the rules, regulations, or procedures issued or adopted pursuant to this order, or the nondiscrimination provisions included in any agreement or contract, with respect to any program affected by this order administered by any other executive department or agency.

### PART IV—ESTABLISHMENT OF THE PRESIDENT'S COMMITTEE ON EQUAL OPPORTUNITY IN HOUSING

SEC. 401. There is hereby established the President's Committee on Equal Opportunity in Housing which shall be composed of the Secretary of the Treasury; the Secretary of Defense; the Attorney General; the Secretary of Agriculture; the Housing and Home Finance Administrator; the Administrator of Veterans Affairs; the Chairman



The Federal Home Loan Bank Board; a member of the staff of the Executive Office of the President to be assigned to the Committee by direction of the President, and such other members as the President shall from time to time appoint from the public. The member assigned by the President from the staff of the Executive Office shall serve as the Chairman and Executive Director of the Committee. Each department or agency head may designate an alternate to represent him in his absence.

Sec. 402. Each department or agency subject to this order shall, to the extent authorized by law (including § 214 of the Act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691)), furnish assistance to and defray the necessary expenses of the Committee.

#### **PART V—POWERS AND DUTIES OF THE PRESIDENT'S COMMITTEE ON EQUAL OPPORTUNITY IN HOUSING**

Sec. 501. The Committee shall meet upon the call of the Chairman and at such other times as may be provided by its rules. It shall: (a) adopt rules to govern its deliberations and activities; (b) recommend general policies and procedures to implement this order; (c) consider reports as to progress under this order; (d) consider any matters which may be presented to it by any of its members; and (e) make such reports to the President as he may require or the Committee shall deem appropriate. A report to the President shall be made at least once annually and shall include references to the actions taken and results achieved by departments and agencies subject to this order. The Committee may provide for the establishment of subcommittees whose members shall be appointed by the Chairman.

Sec. 502. (a) The Committee shall take such steps as it deems necessary and appropriate to promote the coordination of the activities of departments and agencies under this order. In so doing, the Committee shall consider the overall objectives of Federal legislation relating to housing and the right of every individual to participate without discrimination because of race, color, creed, or national origin in the ultimate benefits of the Federal programs subject to this order.

(b) The Committee may confer with representatives of any department or agency, State or local public agency, civic, industry, or labor group, or any other group directly or indirectly affected by this order; examine the relevant rules, regulations, procedures, policies, and practices of any department or agency subject to this order and make such recommendations as may be necessary or desirable to achieve the purposes of this order.

(c) The Committee shall encourage educational programs by civic, educational, religious, industry, labor, and other nongovernmental groups to eliminate the basic causes of discrimination in housing and related facilities provided with Federal assistance.

Sec. 503. The Committee shall have an executive committee consisting of the Committee's Chairman and two other members designated by him from among the public members. The Chairman of the Committee shall also serve as Chairman of the Executive Committee. Between meetings of the Committee, the Executive Committee shall be primarily responsible for carrying out the functions of the Committee and may act for the Committee to the extent authorized by it.

#### **PART VI—MISCELLANEOUS**

Sec. 601. As used in this order, the term "departments and agencies" includes any wholly-owned or mixed-ownership Government corporation, and the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories of the United States.

Sec. 602. This order shall become effective immediately.

JOHN FITZGERALD KENNEDY.

THE WHITE HOUSE,  
November 20, 1962.



Thursday  
August 9, 1979

# Federal Register

---

## Part IV

### Department of Housing and Urban Development

---

Office of Assistant Secretary for Fair  
Housing and Equal Opportunity

---

Compliance Procedures for Affirmative  
Fair Housing Marketing





# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

## 24 CFR Part 108

[Docket No. R-79-701]

Compliance Procedures for Affirmative Fair Housing Marketing

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

**SUMMARY:** This Final Rule establishes a comprehensive review procedure for determining applicant compliance with Affirmative Fair Housing Marketing Plans submitted to HUD, and assuring compliance with the Department's Affirmative Fair Housing Marketing requirements. It makes final, with certain changes, a proposed rule published at 42 FR 5097 on January 27, 1977.

**EFFECTIVE:** September 10, 1979.

**FOR FURTHER INFORMATION CONTACT:** Marianne Freeman, Special Assistant, Assistant Secretary for Fair Housing and Equal Opportunity, room 5240, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, telephone: 202-735-7007.

**SUPPLEMENTARY INFORMATION:** The purpose of these regulations is to establish a process to implement the Department's Affirmative Fair Housing Marketing (AFHM) Regulations (24 CFR 200.600 et seq.) by establishing a comprehensive compliance procedure which would provide all applicants subject to AFHM requirements advance information as to Departmental procedure to assure compliance with AFHM Regulations. Notice of a proposed amendment to Title 24 to include a new Part 108 was published in the Federal Register on January 7, 1977 (42 FR 5097) and comments were received from interested persons and organizations. Consideration has been given to each comment.

In response to a comment received, appropriate revisions in this regulation were made to reflect clearly the amendment of Title VIII to prohibit discrimination based on sex (Housing and Community Development Act of 1974, Public Law 93-383) and the AFHM Regulations as amended on May 6, 1975 (40 FR 20080).

A group of fair housing organizations that filed their comments jointly

suggested that the process of evaluating applicants' AFHM plans (Section 108.4 of the proposed regulations) should be initiated earlier, and requested that the regulations be rewritten to require that applicants file a "Notification of Intent to Begin Marketing" and submit evidence at that time of compliance with the plans as approved. These organizations also requested that the show cause procedure to determine compliance be eliminated, and that a full compliance review be conducted when evidence submitted at this time, or in any reports required, would appear to indicate noncompliance.

Although the comments of this group of fair housing organizations were not totally adopted as submitted, most of the comments have been incorporated in the regulation. Notification of the intent to begin marketing units, which is currently required in most Section 8 Housing Assistance Payments Programs, will now, under this regulation, be required from all applicants submitting an AFHM Plan.

The regulation further establishes a regular procedure for reviewing compliance with previously approved Affirmative Fair Housing Marketing plans and for updating such plans when necessary. Additionally, pre-occupancy conferences, which have been used in some HUD housing programs, can now be held to review an applicant's AFHM plan prior to the initiation of marketing activities.

The entire proposed compliance procedures have been compressed into: (1) A pre-occupancy conference; (2) a compliance meeting; (3) a compliance review; and (4) initiation of sanctions. The show cause procedure involving the formal presentation of evidence prior to the initiation of a compliance review has been eliminated as being cumbersome, time consuming, and duplicative. Less formal procedures have been developed. These procedures are intended to establish a cumulative process which provides a setting for timely informal resolution of matters prior to the imposition of sanctions. The mechanisms for such informal resolution are the pre-occupancy conference and the compliance meeting. A pre-occupancy conference will be called, as necessary, by the Area Office for resolution of matters prior to initiation of marketing. A compliance meeting is a more formal proceeding to be scheduled by the Director of the Office of Regional FH&EO whenever a complaint, a sales or rental report, a pre-occupancy conference or other information indicates possible noncompliance with the AFHM regulation or this Part or the

need to modify the AFHM plan implementation of the Plan.

The stages of the AFHM process provided in this Part are summarized below:

(1) **Pre-occupancy Conference** regulation requires each applicant submit a Notification of Intent Marketing to the appropriate Office 90 days prior to initiation of marketing. Upon receipt of the Fair Housing and Equal Opportunity (FH&EO) Division of the Area will review the applicant's plan necessary, schedule a pre-occupancy conference. Such a conference held prior to initiation of marketing activities by the applicant.

At the conference the pre-approved AFHM plan is reviewed to determine if the plan and/or implementation require modification. The purpose of such modification, assure, prior to implementation marketing, that the goals of regulations and the plan will be achieved.

(2) **Compliance Meeting.** A compliance meeting is scheduled upon complaint, a sales or occupancy or other information indicates goals of the AFHM plan may not be achieved or that the implementation of the plan should be modified. Compliance meetings also may be scheduled where an applicant fails to comply with a procedural requirement of this part, such as submission of required reports or procedures for the meeting set forth in a new Section 108.4.

An applicant is requested to bring the meeting documentation of the AFHM plan is being implemented and other appropriate evidence determined as a result of the meeting. If corrections are needed to the AFHM plan and the applicant makes such necessary corrections, the Department may conduct a comprehensive compliance review where appropriate, refer the matter to the Assistant Secretary for Fair Housing and Equal Opportunity for initiation of actions, including the imposition of sanctions.

(3) **Compliance Review.** A compliance review is required in a new Section 108.40. The purpose of a compliance review is to determine whether or not the applicant is in compliance with the Department's AFHM requirements, the approved AFHM plan and, where applicable, the provisions of Order 11063 and Title VIII. Compliance reviews may be scheduled in response to specific complaints.



other information indicating non-compliance.

Applicants are to be given at least five days notice of the time and place set for the compliance review. A review will be made of:

- (1) Applicant's sales and rental practices;
- (2) Programs to attract minority and majority buyers and renters, of both sexes.
- (3) Data on the size and location of units, services provided, prices and rental ranges, and the race and sex of buyers, tenants, and rental and sales staff.

(4) Other matters relating to marketing, sales and rentals of dwellings under HUD affirmative marketing requirements, the AFHM Plan, or this part.

Following a compliance review, a report will be prepared indicating whether a finding of compliance or noncompliance has been made. If it is found that the applicant is in compliance, all parties concerned shall be notified. Where a finding of noncompliance is made, the specific violation(s) will be set forth and a statement made that the Department may consider initiating actions to impose sanctions.

#### (4) Initiation of Sanctions

Whenever a finding of noncompliance is made, the specific violation(s) will be set forth and a statement made that, unless matters raised are resolved, the Assistant Secretary for Fair Housing and Equal Opportunity will make a determination as to whether to initiate actions to impose sanctions. Notice of the referral to the Assistant Secretary will be given to the applicant. The appropriate program officials will also be informed of any compliance actions initiated pursuant to this regulation.

In response to one comment received, a new Section 108.35 has been incorporated to show clearly that individuals and private or public agencies may file complaints alleging violations of an approved AFHM plan.

A recommendation that a complainant be a party to all proceedings was rejected since the complainant who files a complaint of a violation of an AFHM plan is not an aggrieved individual entitled to individual relief under HUD's AFHM regulations. However, where a complaint includes allegations of violations of Title VIII of the Civil Rights Act of 1968, the complainant is an aggrieved person within the terms of Section 810(a) of Title VIII and is a party to all proceedings for enforcement of complaints against discriminatory housing practices.

Other comments were of a general nature and could not be addressed in the regulation. However, various editorial and technical corrections have been made pursuant to the recommendations of commentators and staff.

The Department has determined that this Regulation will not have an environmental impact, as defined in the "Procedures for Protection and Enhancement of Environmental Quality." A copy of this finding is available for inspection and copying in the Office of the Rules Docket Clerk at the above address.

Accordingly, Subchapter A of Chapter I of Title 24 of the Code of Federal Regulations is amended by including a new Part 108 to read as follows:

### PART 108—COMPLIANCE PROCEDURES FOR AFFIRMATIVE FAIR HOUSING MARKETING

#### Sec.

- 108.1 Purpose and Application.
- 108.5 Authority.
- 108.15 Pre-occupancy conference.
- 108.20 Area Office Responsibility for Monitoring Plans and Reports.
- 108.21 Regional Office Compliance Responsibility.
- 108.25 Compliance Meeting.
- 108.35 Complaints.
- 108.40 Compliance Reviews.
- 108.45 Compliance Report.
- 108.50 Sanctions.

Authority.—Section 7(d) of the Department of Housing and Urban Development Act of 1968, 42 U.S.C. Section 3533(d).

#### § 108.1 Purpose and Application.

(a) The primary purpose of this regulation is to establish procedures for determining whether or not an applicant's actions are in compliance with its approved Affirmative Fair Housing Marketing (AFHM) plan, AFHM Regulation (24 CFR 200.600), and AFHM requirements in Departmental programs.

(b) These regulations apply to all applicants for participation in subsidized and unsubsidized housing programs administered by the Department of Housing and Urban Development and to all other persons subject to Affirmative Fair Housing Marketing requirements in Departmental programs.

#### (c) The term "Applicant" includes:

(1) All persons whose applications are approved for development or rehabilitation of subdivisions; multifamily projects; mobile home parks of five or more lots, units or spaces; or dwelling units, when the applicant's participation in FHA housing programs has exceeded, or would thereby exceed,

development of five or more such dwelling units during the year preceding the application, except that there shall not be included in a determination a number of dwelling units developed rehabilitated by an applicant, those which a single family dwelling is constructed or rehabilitated for occupancy by a mortgagor on property owned by the mortgagor and in which the applicant had no interest prior to entering into the contract for construction or rehabilitation. For purposes of this definition, a person remains an "applicant" from the submission of an application through duration of receipt of assistance pursuant to such application.

(2) All other persons subject to requirements in Departmental programs.

(d) The term "person" includes more individuals, corporations, partnerships, associations, labor organizations, legal representative agents, mutual companies, joint companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries, public entities.

#### § 108.5 Authority.

The regulations in this part are pursuant to the authority to issue regulations granted to the Secretary Section 7(d) of the Department of Housing and Urban Development Act of 1968, 42 U.S.C. 3533(d). They include the functions, powers, and duties imposed on the Secretary by Executive Order 11053, 27 FR 11527 and Title 42 of the Civil Rights Act of 1968, 3608.

#### § 108.15 Pre-occupancy conference

Applicants shall submit a Notice of Intent to Begin Marketing to Area Office having jurisdiction in the area in which the housing is located later than 90 days prior to engaging in sales or rental marketing activities. Upon receipt of the Notification to Begin Marketing from the Area Office, the FH&EO Division of the Area Office shall review any previously approved plan and may schedule an occupancy conference. Such an occupancy conference shall be held prior to initiation of sales or rental marketing activities.

At this conference, the previously approved AFHM plan shall be reviewed with the applicant to determine if the plan and/or its proposed implementation requires modification prior to initiation of marketing activities. AFHM regulation and the plan



**§ 108.20 Area Office Responsibility for monitoring plans and reports.**

(a) *Submission of Documentation.* Pursuant to initiation of marketing, the applicant shall submit to the Area Office reports documenting the implementation of the AFHM plan, including sales or rental reports, as required by the Department. Copies of such documentation shall be forwarded to the Director of the Office of Regional Fair Housing and Equal Opportunity by the FH&EO Division of the Area Office as requested.

(b) *Monitoring of AFHM Plan.* The FH&EO Division of the Area Office is responsible for monitoring AFHM plans and providing technical assistance to the applicant in preparation or modification of such plans during the period of development and initial implementation.

(c) *Review of Applicant's Reports.* Each sales or rental report shall be reviewed by the FH&EO Division of the Area Office as it is received. When sales or rental reports show that 20% of the units covered by the AFHM plan have been sold or rented, or whenever it appears that the plan may not accomplish its intended objective, the Area Office FH&EO Division shall notify the Director of the Office of Regional FH&EO.

(d) *Failure of Applicant to File Documentation.* If the applicant fails to file required documentation, the applicant shall be sent a written notice indicating that if the delinquent documentation is not submitted to the Area Office within 10 days from date of receipt of the notice, the matter will be referred to the Director of the Regional FH&EO for action which may lead to the imposition of sanctions.

**§ 108.21 Regional Office Compliance Responsibility.**

The Director of the Office of Regional FH&EO shall be responsible for determining whether an applicant's actions are in apparent compliance with its approved AFHM plan, the AFHM regulations, and this Part and for determining changes or modifications necessary in the Plan after initiation of marketing.

**§ 108.22 Compliance Meeting.**

(a) *Scheduling Meeting.* If an applicant fails to comply with requirements under Sections 108.15 or 108.20 or it appears that the goals of the AFHM plan may not be achieved, or that the implementation of the Plan should be modified, the Director of the Office of Regional FH&EO shall schedule a meeting with the applicant.

The meeting shall be held at least ten days before the next sales or rental report is due. The purpose of the compliance meeting is to review the applicant's compliance with AFHM requirements and the implementation of the AFHM Plan and to indicate any changes or modifications which may be required in its Plan.

(b) *Notice of Compliance Meeting.* A Notice of Compliance Meeting shall be sent to the last known address of the applicant, by certified mail or through personal service. The Notice will advise the applicant of the right to respond within seven (7) days to the matters identified as subjects of the meeting and to submit information and relevant data evidencing compliance with the AFHM regulations, the AFHM Plan, Executive Order 11083 and Title VIII of the Civil Rights Act of 1968, when appropriate.

(c) *Applicant Data Required.* The applicant will be requested in writing to provide, prior to or at the compliance meeting, specific documents, records, and other information relevant to compliance, including but not limited to:

(1) Copies or scripts of all advertising in the Standard Metropolitan Statistical Area (SMSA) or housing market area, as appropriate, including newspaper, radio and television advertising, and a photograph of any sale or rental sign at the site of construction;

(2) Copies of brochures and other printed material used in connection with sales or rentals;

(3) Evidence of outreach to community organizations;

(4) Any other evidence of affirmative outreach to groups which are not likely to apply for the subject housing;

(5) Evidence of instructions to employees with respect to company policy of nondiscrimination in housing;

(6) Description of training conducted with sales/rental staff;

(7) Evidence of nondiscriminatory hiring and recruiting policies for staff engaged in the sale or rental of properties, and data by race and sex of the composition of the staff;

(8) Copies of applications and waiting lists of prospective buyers or renters maintained by applicant;

(9) Copies of Sign-in Lists maintained on site for prospective buyers and renters who are shown the facility;

(10) Copies of the selection and screening criteria;

(11) Copies of relevant lease or sales agreements;

(12) Any other information which documents efforts to comply with an approved plan.

(d) *Preparation for the Compliance Meeting.* The Area Office Housing

Division will provide information concerning the status of the proceedings involved to be present applicant at the meeting. The Manager shall be notified of it and may attend.

(e) *Resolution of Matters.* Matters raised in the compliance meetings are resolved through to the plan or its implementation terms of the resolution shall be written and submitted to the Office within 10 days of the compliance meeting.

(f) *Determination of Compliance.* The evidence shows no violation of AFHM regulations and that applicant is complying with AFHM plan and this Part, the Office of Regional FH&EO notify the applicant within 10 days of the meeting.

(g) *Determination of Possible Noncompliance.* If the evidence indicates an apparent failure with the AFHM plan or the regulation, or if the matters cannot be resolved, the Director of the Office of Regional FH&EO notify the applicant no later than 10 days after the date of the compliance meeting is held by certified mail, return receipt requested, and shall advise applicant that the Department conducts a comprehensive review or refer the matter to Assistant Secretary for Fair Housing and Equal Opportunity for action including the imposition of sanctions. The purpose of the review is to determine whether applicant has complied with provisions of Executive Order 11083 and Title VIII of the Civil Rights Act and the AFHM regulations in conjunction with the applicable AFHM plan previously approved.

(h) *Failure of Applicant to Attend Meeting.* If the applicant fails to attend the scheduled proceedings, the Director of the Office of Regional FH&EO shall so notify the applicant no later than ten days after the date of the scheduled meeting. In writing by certified mail, receipt requested, and shall advise applicant as to whether the Department conducts a comprehensive review or refer the matter to Assistant Secretary for Fair Housing and Equal Opportunity for action including the imposition of sanctions.



**§ 108.35 Complaints.**

Individuals and private and public entities may file complaints alleging violations of the AFHM regulations or an approved AFHM plan with any HUD Area Office, HUD Regional Office, or with the Assistant Secretary for FH&EO. Complaints will be referred to the Director of the Office of Regional FH&EO. Where there is an allegation of a violation of Title VIII the complaint also will be processed under Part 105.

**§ 108.40 Compliance reviews.**

(a) *General.* All compliance reviews shall be conducted by the Director of the Office of Regional FH&EO or designee. Complaints alleging a violation(s) of the AFHM regulations, or information ascertained in the absence of a complaint indicating an applicant's failure to comply with an AFHM plan, shall be referred immediately to the Director of the Office of Regional FH&EO. The Regional Director for Housing and the Area Manager shall be notified as appropriate of all alleged violations of the AFHM regulations or alleged failure to comply with an AFHM plan.

(b) *Initiation of Compliance Reviews.* Even in the absence of a complaint or other information indicating noncompliance pursuant to subsection (a), the Director of the Office of Regional FH&EO may conduct periodic compliance reviews throughout the life of the mortgage in the case of multi-family projects and throughout the duration of the Housing Assistance Payments Contract with the Department in the case of housing assisted under Section 8 of the United States Housing Act of 1937, as amended, 42 U.S.C. 51437.

(c) *Nature of Compliance Reviews.* The purpose of a compliance review is to determine whether the applicant is in compliance with the Department's AFHM requirements and the applicant's approved AFHM plan. Where allegations under this part may also constitute a violation of the provisions of Executive Order 11063 or Title VIII, the review will also determine compliance with the requirements thereof. The applicant shall be given at least five (5) days notice of the time set for any compliance review and the place or places for such review. The compliance review will cover the following areas:

(1) Applicant's sales and rental practices, including practices in soliciting buyers and tenants, determining eligibility, selecting and rejecting buyers and renters, and in

concluding sales and rental transactions.

(2) Programs to attract minority and majority buyers and renters regardless of sex, including:

(A) use of advertising media, brochures, and pamphlets;

(B) conformance with both the Department's Fair Housing Poster Regulation (24 CFR 110) and the Advertising Guidelines for Fair Housing (37 FR 6700) and any revisions thereto.

(3) Data relating to:

(A) the size and location of units;

(B) services provided;

(C) sales and/or rental price ranges;

(D) the race and sex of buyers and/or renters;

(E) race and sex of staff engaged in sale or rental of dwellings.

(4) Other matters relating to the marketing or sales of dwellings under HUD affirmative marketing requirements, the AFHM Plan and this Part.

**§ 108.45 Compliance report.**

Following a compliance review, a report shall be prepared promptly and the Assistant Secretary for FH&EO shall make a finding of compliance or noncompliance. If it is found that the applicant is in compliance, all parties concerned shall be notified of the findings. Whenever a finding of noncompliance is made pursuant to this Part, the report shall list specifically the violations found. The applicant shall be sent a copy of the report by certified mail, return receipt requested, together with a notice that, if the matter cannot be resolved within ten days of receipt of the Notice, the matter will be referred to the Assistant Secretary for FH&EO to make a determination as to whether actions will be initiated for the imposition of sanctions. The Director of the Office of Regional Housing and the Area Director of the Housing Division shall also receive a copy of the report and the notice of intention to refer the matter to the Assistant Secretary for FH&EO for a determination as to whether actions will be initiated to impose sanctions.

**§ 108.50 Sanctions.**

Applicants failing to comply with the requirements of these regulations, the AFHM regulations, or an AFHM plan will make themselves liable to sanctions authorized by law, regulations, agreements, rules, or policies governing the program pursuant to which the application was made, including, but not limited to, denial of further participation in Departmental programs and referral to the Department of Justice for suit by

the United States for injunctive appropriate relief.

Issued at Washington, D.C. July  
Patricia Roberts Harris,  
Secretary, Department of Housing  
Development.

FR Doc. 79-24485 Filed 8-9-79; 8:45 am  
BILLING CODE 4210-01-0









DOUGLASS PLAZA HOUSING COMPANY I  
(a Massachusetts Limited Partnership)

"RENTAL PORTION"

MHFA PROJECT NO. 85-028-S

MORTGAGOR'S CERTIFICATE OF ACTUAL COST

JANUARY 31, 1990

CONTENTS

	<u>Page</u>
Independent auditor's report	1
Cost Certification Schedule for Mortgagor (Exhibit B)	2
Schedules of Selected Construction Costs - (Schedules A & B)	3 - 5
Schedule of Construction Costs - Comparison of Actual Costs and Processed Amounts	6
Schedule of Amounts Outstanding	7 - 8
Statement of Income and Expenses	9
Notes to Mortgagor's Certificate of Actual Cost	10
Certificate of Mortgagor	11 - 13





Robert Ercolini & Company  
Certified Public Accountants  
Fifty-Five Summer Street  
Boston, Massachusetts 02110-1007  
Telephone (617) 482-5511  
Telecopier (617) 426-5252

## INDEPENDENT AUDITOR'S REPORT

To the Partners of  
Douglass Plaza Housing Company I  
(a Massachusetts Limited Partnership)  
Boston, Massachusetts

We have audited the Cost Certification Schedule for Mortgagor (Exhibit B), Schedules of Selected Construction Costs (Schedules A & B), Schedule of Construction Costs - Comparison of Actual Costs and Processed Amounts and Schedule of Amounts Outstanding of Douglass Plaza Housing Company I (a Massachusetts Limited Partnership), MHFA Project No. 85-028-S, "Rental Portion", as of January 31, 1990, and the Statement of Income and Expenses for the period November 1, 1989 (initial occupancy) through January 31, 1990. These cost schedules and financial statement are the responsibility of the Partnership's management. Our responsibility is to express an opinion on these cost schedules and financial statement based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the cost schedules and financial statement referred to in the first paragraph are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. In regard to the Cost Certification Schedule for Mortgagor (Exhibit B), we examined evidence supporting all of the costs listed therein. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the cost schedules and financial statement. We believe our audit provides a reasonable basis for our opinion.

As described in Note 1, the Partnership has prepared these cost schedules and financial statement in conformity with the accounting and reporting practices prescribed by the Massachusetts Housing Finance Agency (MHFA), which is a comprehensive basis of accounting other than generally accepted accounting principles.

In our opinion, the cost schedules and financial statement referred to above present fairly, in all material respects, the actual costs of Douglass Plaza Housing Company I, "Rental Portion," at January 31, 1990, and its income and expenses for the period November 1, 1989 (initial occupancy) through January 31, 1990, on the basis of accounting described in Note 1.

This report is intended solely for the information and use of the management of Douglass Plaza Housing Company I and for filing with MHFA and should not be used for any other purpose.



March 23, 1990



"RENTAL PORTION"

MHFA PROJECT NO. 85-028-S

COST CERTIFICATION SCHEDULE FOR MORTGAGOR (Exhibit B)

JANUARY 31, 1990

Equity Amounts (repeat those items from Schedule B pledged as equity)

Developer's fee	\$ 3,530,294	(1) \$ 3,530,294
-----------------	--------------	------------------

Construction Costs by Item

Amount paid to general contractor	15,788,598	(2) 15,788,598
Surveys, permits, etc.	544,145	
Architects fee - design	488,891	
Architects fee - inspection	106,927	
Bond premium	76,500	
Subtotal		(3) 1,216,463

General Development Costs by Item

Construction loan interest	1,628,597	
ess SHARP credits	( 128,204 )	
Subtotal	1,500,393	
Real estate taxes	33,057	
Insurance	40,424	
MHFA site inspection fee	70,738	
MHFA application fee	42,443	
MHFA financing fee	282,954	
Legal fees	249,755	
Title and recording	75,000	
Organizational and accounting	15,000	
Rent-up and marketing (including furniture, fixtures and equipment of \$115,676)	510,170	
Development overhead	882,574	
Appraisal fee	4,000	
Land	70,200	
Net rental loss	78,807	
Subtotal		(4) 3,855,515
Total actual cost (total of lines 1,2,3,4)		24,390,870
Total replacement cost from Schedule B, as processed (Page 6)		22,134,538

Surplus) or Deficit	\$ 2,256,332
	*****





"RENTAL PORTION"

MHFA PROJECT NO. 85-028-S

SCHEDULE OF SELECTED CONSTRUCTION COSTS  
SURVEYS, PERMITS, ETC.

JANUARY 31, 1990

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
The City of Boston	Permits, water & sewer	\$ 139,012
The Bank of New England	Letter of credit fees	98,524
GZO	Environmental engineering	28,718
Briggs Associates	Engineering	40,230
Boston Land Company, Executive Offices	Clerk-of-the-works, landscaping	74,329
Add, Inc.	Misc. architecture	33,028
CWC Builders, Inc.	Millwork	20,190
Boston Gas	Installation	12,865
H.W. Moore Associates	Engineering services	12,527
Geotechnical Consultants	Surveys	10,403
Cullinan Engineering	Engineering services	11,645
Rochon Associates	Architectural rendering	5,338
Environmental Applications	Environmental studies	7,716
Urban Construction	Drawings	3,080
Schreiber Associates	Misc. landscape design	4,632
Dolben	Property tax consulting	7,008
Robert Ercolini & Company	Audit/construction period	4,612
HMM Associates	Traffic studies	1,248
Robert Wexler	Construction consulting	1,908
Klaus Fuchs, Inc.	Interior design	6,274
Boston Police	Security training	3,081
Boston Gun	Security training	4,319
R.C. May Associates	Consulting	3,543
Miscellaneous vendors (amounts less than \$1,000)	Surveys, permits, etc.	9,915
Total		<u>\$ 544,145</u> -----



"RENTAL PORTION"

MHFA PROJECT NO. 85-028-S

SCHEDULE OF SELECTED CONSTRUCTION COSTS  
RENT-UP AND MARKETING

JANUARY 31, 1990

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
Boston Land Company Management Services, Inc.	Rent-up payroll and administrative reimbursements	\$ 205,563 2,315
Design East	Decorating-models	47,069
Sametz Blackstone	Brochures	32,599
Putnam Furniture	Models	8,652
Printer's Collaborative	Printing brochures	8,621
Boston Globe	Advertising	4,673
Rangeley Companies	Signs	7,193
Richard Dargy	Models - painting	1,486
Service Master	Equipment	1,850
Wayne Soverns	Photographs	1,791
Wolfer's Lighting	Lighting-models	2,564
Buyer Advertising	Advertising	2,459
City of Boston	Security training	3,046
Winkerton's, Inc.	Security	2,464
Int Management	Printing	2,043
Speak Easy	Printing	1,223
Boston Edison	Electricity-rent-up	3,971
Edwards Co., Inc.	Printing supplies	3,820
L.E. Muran	Printing supplies	1,537
Monotype Composition	Advertising	1,973
Blake & Rebhan	Rental office supplies	2,115
Bullfinch Realty	Realtor's fees	7,300
Best of Boston Realty	Realtor's fees	5,090
Al-Mar Realty, Inc.	Realtor's fees	4,845
Lucille Desisto	Realtor's fees	1,056
The Apartment Network	Realtor's fees	3,110
Townhouse Management Company	Realtor's fees	1,860
Maloney & Finn, Inc.	Realtor's fees	1,120
Eliot Hotel	Relocation costs	10,923
Miscellaneous vendors	Rent-up and marketing	10,163
(Amounts less than \$1,000)		
Subtotal		<u>394,494</u>



DOUGLASS PLAZA HOUSING COMPANY I  
(a Massachusetts Limited Partnership)

"RENTAL PORTION"

MHFA PROJECT NO. 85-028-S

SCHEDULE OF SELECTED CONSTRUCTION COSTS  
RENT-UP AND MARKETING - CONTINUED

JANUARY 31, 1990

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
Subtotal - from page 4		\$ 394,494
<u>Furniture fixtures &amp; equipment</u>		
Burlington Industries	Carpeting-models	82,327
East Company	Laundry equipment	16,818
Manchester Equipment Co.	Office equipment	3,369
Xerox Corporation	Office equipment	2,336
Dunn Copy Products	Office equipment	2,464
New England Telephone	Office equipment	1,010
NYNEX	Office equipment	825
Payse Electric Company	Office equipment	202
Klaus Fuchs, Inc.	Furniture	5,050
trex Corporation	Furniture	1,275
Subtotal		<u>115,676</u>
Total		\$ 510,170 -----



DOUGLASS PLAZA HOUSING COMPANY I  
(a Massachusetts Limited Partnership)

"RENTAL PORTION"

MHFA PROJECT NO. 85-028-S

SCHEDULE OF CONSTRUCTION COSTS -  
COMPARISON OF ACTUAL COSTS AND PROCESSED AMOUNTS

JANUARY 31, 1990

	<u>Schedule B as Processed</u>	<u>Actual Per Cost Certification</u>	<u>Actual Higher (Lower)</u>
Developer's fee	\$ 3,530,294	\$ 3,530,294	\$ _____
Total equity	3,530,294	3,530,294	
Construction contract	14,676,500	14,676,500	
Change orders		1,112,098	1,112,098
Subtotal	14,676,500	15,788,598	1,112,098
Surveys, permits, etc.	264,500	544,145	279,645
Architects fee - design	488,473	488,891	418
Architects fee - inspection	106,927	106,927	
Bond premium	76,500	76,500	
	936,400	1,216,463	280,063
Construction loan interest	1,190,209	1,628,597	438,388
Less SHARP credit		( 128,204)	( 128,204)
Subtotal	1,190,209	1,500,393	310,184
Real estate taxes	75,000	33,057	( 41,943)
Insurance	83,726	40,424	( 43,302)
MHFA site inspection fee	70,738	70,738	
MHFA application fee	42,443	42,443	
MHFA financing fee	282,954	282,954	
Legal fees	100,000	249,755	149,755
Title and recording	75,000	75,000	
Organizational and accounting	14,500	15,000	500
Rent-up and marketing (in- cluding furniture, fixtures and equipment of \$115,676)	100,000	510,170	410,170
Land	70,200	70,200	
Development overhead	882,574	882,574	
Appraisal fee	4,000	4,000	
Net rental loss		78,807	78,807
Subtotal	2,991,344	3,855,515	864,171
Total Schedule B as processed	\$ 22,134,538 -----	\$ 24,390,870 -----	\$ 2,256,332 -----





DOUGLASS PLAZA HOUSING COMPANY I  
(a Massachusetts Limited Partnership)

"RENTAL PORTION"

MHFA PROJECT NO. 85-028-S

SCHEDULE OF AMOUNTS OUTSTANDING AS OF JANUARY 31, 1990

<u>Name, Address, Phone Number</u>	<u>Explanation</u>	<u>Amount</u>
Barkan Construction Company 1330 Boylston Street Chestnut Hill, MA 02167 (617) 734-9600	Retainage	\$ 733,825
The Boston Globe P.O. Box 2553 Boston, MA 02208 (617) 929-2681	Advertising	1,008
Mintz, Levin, Cohn, Ferris Glovsky and Popeo, P.C. One Financial Center Boston, MA 02111 (617) 542-6000	Legal fees	90,879
W.C. Builders Inc. 1 Central Wharf 75 Central Street Boston, MA 02109 (617) 574-9660	Woodwork	20,190
Edwards Company, Inc. P.O. Box 75571 Chicago, IL	Fire alarms	3,820
MHFA 50 Milk Street Boston, MA 02109	Construction note interest, inspection fee and SHARP reimbursement	226,183
EastCo P.O. Box 4026 Boston, MA 02211 (617) 329-3000	Laundry equipment	16,818
Blake and Rebhan 420 D Street Boston, MA 02210 (617) 426-2283	Rent-up	2,115



DOUGLASS PLAZA HOUSING COMPANY I  
(a Massachusetts Limited Partnership)

"RENTAL PORTION"

MHFA PROJECT NO. 85-028-S

SCHEDULE OF AMOUNTS OUTSTANDING AS OF JANUARY 31, 1990 - CONTINUED

<u>Name, Address, Phone Number</u>	<u>Explanation</u>	<u>Amount</u>
Boston Land Company Management Services, Inc. 151 Tremont Street Boston, MA 02111 (617) 451-5757	Payroll	\$ 55,627
Monotype Composition, Co. 645 Summer Street Boston, MA 02210 (617) 269-4188	Advertising	1,150
The Info Center, Inc. 940 North Street Extension Feeding Hills, MA 01030 (413) 786-7987	Rent-up	487
ncord Baptist Church J Warren Street at West Brookline Street Boston, MA 02116 (617) 266-8823	Custodial fee	300
Boston Land Company, Executive Offices 151 Tremont Street Boston, MA 02111 (617) 451-5757	Landscaping	37,250
Miscellaneous vendors	Rent-up	<u>2,229</u>
Total		<u>\$ 1,191,881</u> -----



DOUGLASS PLAZA HOUSING COMPANY I  
(a Massachusetts Limited Partnership)

"RENTAL PORTION"

MHFA PROJECT NO. 85-028-S

STATEMENT OF INCOME AND EXPENSES

PERIOD FROM NOVEMBER 1, 1989 (INITIAL OCCUPANCY)  
THROUGH JANUARY 31, 1990

Income:

Rental income, net of vacancies	\$ 58,468
Other income	<u>4,014</u>
	<u>62,482</u>

Expenses:

Rent-up expenses including advertising, administrative, operating and maintenance	115,678
Utilities	19,466
Letter of credit fees	<u>6,145</u>
	<u>141,289</u>

Net loss	(\$ 78,807)
	<u>-----</u>



DOUGLASS PLAZA HOUSING COMPANY I  
(a Massachusetts Limited Partnership)

"RENTAL PORTION"

MHFA PROJECT NO. 85-028-S

NOTES TO MORTGAGOR'S CERTIFICATE OF ACTUAL COST

PERIOD FROM NOVEMBER 1, 1989  
(INITIAL OCCUPANCY) THROUGH JANUARY 31, 1990

Organization and summary of significant accounting policies:

The Partnership was organized as a Massachusetts limited partnership on October 30, 1987 to acquire real property located in Boston, Massachusetts, and to improve, construct, own, rehabilitate, develop, maintain and operate a mixed use complex of rental (122 units) and "for sale" housing (33 units), commercial space, parking garage and ancillary facilities financed, in whole or in part, by the Massachusetts Housing Finance Agency (MHFA).

The Cost Certification Schedule for Mortgagor (Exhibit B), Schedules of Selected Construction Costs (Schedules A & B), Schedule of Construction Costs - Comparison of Actual Costs and Processed Amounts, Schedule of Amounts Outstanding, and the Statement of Income and Expenses have been prepared in conformity with the accounting practices prescribed by the Massachusetts Housing Finance Agency (MHFA), which is a comprehensive basis of accounting other than generally accepted accounting principles. These practices differ in several respects from generally accepted accounting principles. The major accounting policies in accordance with MHFA requirements affecting certified development costs of the project and the related financial statement are as follows:

Costs are exclusive of kickbacks, rebates or trade discounts.

Financing charges are limited to the lesser of amounts actually paid or amounts approved by MHFA on the MHFA commitment letter.

Certain project development costs to be funded from future syndication proceeds have been excluded from development costs.

Certain operating expenses such as taxes, interest, insurance and depreciation have been excluded from the statement of income and expenses.

Equity amounts are based upon the original Schedule B as approved by MHFA.

Construction was substantially complete on January 31, 1990.

Federal and state income taxes are not included in the financial statement.

Identity of interests:

The identity of interests included in the accompanying Certificate of Mortgagor are incorporated herein by reference.





DOUGLASS PLAZA HOUSING COMPANY I  
(a Massachusetts Limited Partnership)

"RENTAL PORTION"

MHFA PROJECT NO. 85-028-S

CERTIFICATE OF MORTGAGOR

Douglass Plaza Housing Company I (Mortgagor), a limited partnership organized pursuant to Chapter 109 of the Massachusetts General Laws, hereby certifies to Massachusetts Housing Finance Agency (MHFA), under penalty of perjury, that:

1. The Limited Partnership Agreement dated October 30, 1987 by which Mortgagor was formed and as amended and restated on March 28, 1989, is still in full force and effect, and there are no substantial defaults thereunder to the knowledge and belief of Mortgagor.
2. There exists no substantial default on the part of Mortgagor under any of its covenants, obligations, and agreements, contained in the Construction Loan Agreement, Note, Mortgage, Regulatory Agreement, and all other Contract Documents each dated October 30, 1987 as the same may have been amended from time to time each of which relates to the construction of a low and moderate income housing development in Boston, Massachusetts (the "Project").
3. All governmental approvals required by law for the acquisition, construction, ownership and operation of the Project have been obtained, and the Project complies with all zoning, building, fire, and other applicable codes, ordinances, regulations, and laws.
4. Construction has been completed in good and workmanlike manner, in accordance with the plans and specifications set forth in Schedule A of the Construction Loan Agreement, and all materials, chattels and fixtures usually furnished and installed and required by the plans and specifications have been furnished or installed and are of the best quality called for.
5. All monies previously advanced pursuant to requisitions of the mortgage loan have been paid to Barkan Construction Company (the General Contractor), subcontractors, or suppliers, and there are not further amounts owing to any person, other than that which is attached hereto. Any amounts owing will be paid within 30 days of receipt of the balance of the funds held by MHFA.
6. All insurance requirements of the Contract Documents have been complied with, and all policies are paid up and MHFA has been furnished with copies of the policies.



"RENTAL PORTION"

MHFA PROJECT NO. 85-028-S

CERTIFICATE OF MORTGAGOR - CONTINUED

7. Except as noted below, none of the foregoing amounts were paid to a party with whom the Mortgagor has an identity of interest.

<u>Name of Payee/Description</u>	<u>Nature of Identity of Interest</u>
<u>Boston Land Company Management Services, Inc.</u> Rent-up payroll and related cost reimbursements	Robert M. Kargman and Arthur D. Ullian, general partners of mortgagor, are shareholders in Boston Land Company Management Services, Inc.
<u>Boston Land Company, Executive Offices (formerly BIDC)</u> Organization and accounting costs Clerk of the works Landscaping Developer's overhead	Robert M. Kargman and Arthur D. Ullian, general partners of mortgagor, are general partners in Boston Land Company, Executive Offices
<u>Eliot Hotel</u>  Relocation costs included in rent-up and marketing	Arthur D. Ullian, a general partner of mortgagor, has an ownership interest in the Eliot Hotel.



"RENTAL PORTION"

MHFA PROJECT NO. 85-028-S

CERTIFICATE OF MORTGAGOR - CONTINUED

8. SYNDICATION PROCEEDS

CHECK ONE:

PROJECT HISTORIC ( ) PROJECT NON-HISTORIC ( X )

1) Gross Proceeds	<u>\$ 5,771,966</u>
Sale Cost (Detail)	
A. <u>Placement fee/commission</u>	<u>1,090,500</u>
B. <u>Accounting</u>	<u>36,527</u>
C. <u>Legal</u>	<u>155,201</u>
D. <u>Operating deficit guaranty</u>	<u>600,000</u>
E. _____	
2) Total \$ _____	<u>1,882,228</u>
3) NET PROCEEDS (Line 1 minus line 2)	<u>3,889,738</u>

Executed under seal this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

By: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

19

Then personally appeared before me the above named

of

acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said

Before me:

\_\_\_\_\_  
Notary Public



DOUGLASS PLAZA HOUSING COMPANY I  
(a Massachusetts Limited Partnership)

"CONDO PORTION"

MHFA PROJECT NO. 87-011-N

MORTGAGOR'S CERTIFICATE OF ACTUAL COST

JANUARY 31, 1990





DOUGLASS PLAZA HOUSING COMPANY I  
(a Massachusetts Limited Partnership)

"CONDO PORTION"

MHFA PROJECT NO. 87-011-N

MORTGAGOR'S CERTIFICATE OF ACTUAL COST

JANUARY 31, 1990

CONTENTS

	<u>Page</u>
Independent auditor's report	1
Cost Certification Schedule for Mortgagor (Exhibit B)	2
Schedules of Selected Construction Costs - (Schedules A & B)	3 - 4
Schedule of Construction Costs - Comparison of Actual Costs and Processed Amounts	5
Schedule of Amounts Outstanding	6
Notes to Mortgagor's Certificate of Actual Cost	7
Certificate of Mortgagor	8 - 9





Robert Ercolini & Company  
Certified Public Accountants  
Fifty-Five Summer Street  
Boston, Massachusetts 02110-1007  
Telephone (617) 482-5511  
Telecopier (617) 426-5252

## INDEPENDENT AUDITOR'S REPORT

To the Partners of  
Douglass Plaza Housing Company I  
(a Massachusetts Limited Partnership)  
Boston, Massachusetts

We have audited the Cost Certification Schedule for Mortgagor (Exhibit B), Schedules of Selected Construction Costs (Schedules A & B), Schedule of Construction Costs - Comparison of Actual Costs and Processed Amounts and Schedule of Amounts Outstanding of Douglass Plaza Housing Company I (a Massachusetts Limited Partnership), MHFA Project No. 87-011-N, "Condo Portion", as of January 31, 1990. These cost schedules are the responsibility of the Partnership's management. Our responsibility is to express an opinion on these cost schedules based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the cost schedules referred to in the first paragraph are free of material misstatement. In regard to the Cost Certification Schedule for Mortgagor (Exhibit B), we examined evidence supporting all of the costs listed therein. An audit includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the cost schedules. We believe our audit provides a reasonable basis for our opinion.

As described in Note 1, the Partnership has prepared these cost schedules in conformity with the accounting and reporting practices prescribed by the Massachusetts Housing Finance Agency (MHFA), which is a comprehensive basis of accounting other than generally accepted accounting principles.

In our opinion, the cost schedules referred to above present fairly, in all material respects, the actual costs of Douglass Plaza Housing Company I, "Condo Portion", at January 31, 1990, on the basis of accounting described in Note 1.

This report is intended solely for the information and use of the management of Douglass Plaza Housing Company I and for filing with MHFA and should not be used for any other purpose.

*Robert Ercolini & Company*

March 23, 1990



## "CONDO PORTION"

MHFA PROJECT NO. 87-011-N

SCHEDULE OF SELECTED CONSTRUCTION COSTS  
MARKETING AND FURNISHINGS, DECORATIONS AND EQUIPMENT

JANUARY 31, 1990

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
Design East	Models	\$ 60,109
Condominium Collaborative	Marketing consulting	32,738
Sametz, Blackstone	Brochures	20,112
Printer's Collaborative	Brochures	8,621
Burlington Industries	Furnishings	6,395
Boston Land Company Management Services, Inc.	Rent-up payroll; Administrative reimbursements	6,050
Klaus Fuchs, Inc.	Design	4,160
Wayne Soverns	Photographics	1,791
R.C. May & Associates	Consulting	1,007
Black & Copper	Advertising consultant	648
Boston Police	Security training	876
Boston Gun	Security training	581
Miscellaneous vendors (amounts less than \$300)	Marketing	2,259
Total		\$ 145,347 =====



"CONDO PORTION"

MHFA PROJECT NO. 87-011-N

SCHEDULE OF SELECTED CONSTRUCTION COSTS  
SURVEYS, PERMITS, ETC.

JANUARY 31, 1990

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
The City of Boston	Permits	\$ 86,595
The Bank of New England	Letter of credit fees	65,624
GZO	Environmental engineering	43,149
Briggs Associates	Engineering	36,696
Boston Land Company, Executive Offices	Clerk-of-the-works	22,422
ADD, Inc.	Misc. architectural	14,002
CWC Builders, Inc.	Mill work	10,095
Garvin Construction	Survey and permit	9,679
Boston Gas	Survey and permit	8,940
H.W. Moore Associates	Engineering services	7,446
Geotechnical Consultants	Surveys	6,843
Cullinan Engineering	Engineering services	6,881
Rochon Associates	Architectural engineering	5,337
Environmental Applications	Environmental studies	2,193
Barkan Construction	Drawings	2,140
Schreiber Associates	Misc. landscape design	1,317
Dolben	Property tax consulting	1,992
Robert Ercolini & Company	Audit/construction period	1,311
Miscellaneous vendors		
(amounts less than \$1,000)	Surveys, permits & fees	<u>2,706</u>
Total		<u>\$ 335,368</u> *****





"CONDO PORTION"

MHFA PROJECT NO. 87-011-N

COST CERTIFICATION SCHEDULE FOR MORTGAGOR (Exhibit B)

JANUARY 31, 1990

Equity Amounts (repeat those items from Schedule B pledged as equity)

Land	\$ 144,000	
Carrying costs and contingency	<u>602,437</u>	(1) \$ <u>746,437</u>

Construction Costs by Item

Amount paid to general contractor	<u>4,306,402</u>	(2) <u>4,306,402</u>
Surveys, permits, etc.	<u>335,368</u>	
Architects fee - design	<u>168,439</u>	
Architects fee - inspection	<u>26,867</u>	
Bond premium	<u>9,266</u>	
Subtotal		(3) <u>539,940</u>

General Development Costs by Item

Construction loan interest	<u>495,555</u>	
Real estate taxes	<u>14,823</u>	
Insurance	<u>14,183</u>	
MHFA site inspection fee	<u>32,294</u>	
MHFA application fee	<u>9,688</u>	
MHFA financing fee	<u>64,588</u>	
Legal fees	<u>185,099</u>	
Title and recording	<u>25,000</u>	
Organizational and accounting	<u>7,500</u>	
Marketing	<u>95,347</u>	
Appraisal fee	<u>16,315</u>	
Carrying costs and contingency	<u>0</u>	
Furnishings, decorations and equipment	<u>50,000</u>	
Subtotal		(4) <u>1,010,392</u>

Total actual cost (total of lines 1,2,3,4)	<u>6,603,171</u>
--------------------------------------------	------------------

Total replacement cost from Schedule B, as processed (Page 5) exclusive of townhouse allocation (Note 2)	<u>6,233,459</u>
----------------------------------------------------------------------------------------------------------------	------------------

(Surplus) or Deficit	\$ <u>369,712</u> =====
----------------------	----------------------------



DOUGLASS PLAZA HOUSING COMPANY I  
(a Massachusetts Limited Partnership)

"CONDO PORTION"

MHFA PROJECT NO. 87-011-N

SCHEDULE OF CONSTRUCTION COSTS -  
COMPARISON OF ACTUAL COSTS AND PROCESSED AMOUNTS

JANUARY 31, 1990

	Schedule B as Processed	Actual Per Cost Certification	Actual Higher (Lower)
Land	\$ 144,000	\$ 144,000	\$
Carrying costs and contingency	602,437	602,437	
Total equity	<u>746,437</u>	<u>746,437</u>	
Construction contract	4,024,800	4,049,800 (1)	25,000
Change orders		256,602	256,602
Subtotal	<u>4,024,800</u>	<u>4,306,402</u>	<u>281,602</u>
Surveys, permits, etc.	186,000	335,368	149,368
Architects fee - design	168,307	168,439	132
Architects fee - inspection	33,293	26,867	( 6,426)
Bond premium	27,000	9,266	( 17,734)
Subtotal	<u>414,600</u>	<u>539,940</u>	<u>125,340</u>
Construction loan interest	484,411	495,555	11,144
Real estate taxes	34,400	14,823	( 19,577)
Insurance	29,241	14,183	( 15,058)
MHFA site inspection fee	32,294	32,294	
MHFA application fee	9,688	9,688	
MHFA financing fee	64,588	64,588	
Legal fees	100,000	185,099	85,099
Title and recording	25,000	25,000	
Organization and accounting	50,000	7,500	( 42,500)
Marketing	100,000	95,347	( 4,653)
Appraisal fee	20,000	16,315	( 3,685)
Carrying costs and contingency	48,000		( 48,000)
Furnishings, decorations, and equipment	50,000	50,000	
Subtotal	<u>1,047,622</u>	<u>1,010,392</u>	<u>( 37,230)</u>
Total Schedule B as processed	<u>\$ 6,233,459</u>	<u>\$ 6,603,171</u>	<u>\$ 369,712</u>
(1) Original contract	\$ 5,390,000		
Less: Townhouse deletion	( 1,365,200)		
Pre-construction adjustment	<u>25,000</u>		
Revised contract	<u>\$ 4,049,800</u>		



DOUGLASS PLAZA HOUSING COMPANY I  
(a Massachusetts Limited Partnership)

"CONDO PORTION"

MHFA PROJECT NO. 87-011-N

SCHEDULE OF AMOUNTS OUTSTANDING AS OF JANUARY 31, 1990

<u>Name, Address, Phone Number</u>	<u>Explanation</u>	<u>Amount</u>
Barkan Construction Company 1330 Boylston Street Chestnut Hill, MA 02167 (617) 734-9600	Retainage	\$ 269,500
Mintz, Levin, Cohn, Ferris Glovsky and Popeo, P.C. One Financial Center Boston, MA 02111 (617) 542-6000	Legal fees	25,827
C.W.C. Builders Inc. Old Central Wharf 75 Central Street Boston, MA 02109 (617) 574-9660	Woodwork	10,095
MHFA 50 Milk Street Boston, MA 02109	Construction note interest, inspection fee	68,640
Robert Ercolini & Company, CPA's 55 Summer Street Boston, MA 02110 (617) 482-5511	Cost certification	2,500
Burlington Industries, Inc. P.O. Box 8500, 52485 Philadelphia, PA 19178 (617) 268-8000	Furnishings	<u>6,395</u>
Total		<u>\$ 382,957</u> -----



"CONDO PORTION"

MHFA PROJECT NO. 87-011-N

NOTES TO MORTGAGOR'S CERTIFICATE OF ACTUAL COST

JANUARY 31, 1990

1. Organization and summary of significant accounting policies:

The Partnership was organized as a Massachusetts limited partnership on October 30, 1987 to acquire real property located in Boston, Massachusetts, and to improve, construct, own, rehabilitate, develop, maintain and operate a mixed use complex of rental (122 units) and "for sale" housing (33 units), commercial space, parking garage and ancillary facilities financed, in whole or in part, by the Massachusetts Housing Finance Agency (MHFA).

The Cost Certification Schedule for Mortgagor (Exhibit B), Schedules of Selected Construction Costs (Schedules A & B), Schedule of Construction Costs - Comparison of Actual Costs and Processed Amounts and Schedule of Amounts Outstanding have been prepared in conformity with the accounting practices prescribed by the Massachusetts Housing Finance Agency (MHFA), which is a comprehensive basis of accounting other than generally accepted accounting principles. These practices differ in several respects from generally accepted accounting principles. The major accounting policies in accordance with MHFA requirements affecting certified development costs of the project as follows:

Costs are exclusive of kickbacks, rebates or trade discounts.

Financing charges are limited to the lesser of amounts actually paid or amounts approved by MHFA on the MHFA commitment letter.

Certain project development costs to be funded from future syndication proceeds have been excluded from development costs.

Equity amounts are based upon the original Schedule B as approved by MHFA.

Construction was substantially complete on January 31, 1990.

2. Townhouse:

Costs associated with the townhouses appearing on the original Construction Loan Agreement (Exhibit B) in the amount of \$1,365,200 have been deleted and are not included in the Exhibit B costs presented on the Schedule of Construction Costs - Comparison of Actual Costs and Processed Amounts.

3. Identity of interests:

The identity of interests included in the accompanying Certificate of Mortgagor are incorporated herein by reference.





DOUGLASS PLAZA HOUSING COMPANY I  
(a Massachusetts Limited Partnership)

"CONDO PORTION"

MHFA PROJECT NO. 87-011-N

CERTIFICATE OF MORTGAGOR

Douglass Plaza Housing Company I (Mortgagor), a limited partnership organized pursuant to Chapter 109 of the Massachusetts General Laws, hereby certifies to Massachusetts Housing Finance Agency (MHFA), under penalty of perjury, that:

1. The Limited Partnership Agreement dated October 30, 1987 by which Mortgagor was formed and as amended and restated on March 28, 1989, is still in full force and effect, and there are no substantial defaults thereunder to the knowledge and belief of Mortgagor.
2. There exists no substantial default on the part of Mortgagor under any of its covenants, obligations, and agreements, contained in the Construction Loan Agreement, Note, Mortgage, Regulatory Agreement, and all other Contract Documents each dated October 30, 1987 as the same may have been amended from time to time each of which relates to the construction of a low and moderate income housing development in Boston, Massachusetts (the "Project").
3. All governmental approvals required by law for the acquisition, construction, ownership and operation of the Project have been obtained, and the Project complies with all zoning, building, fire, and other applicable codes, ordinances, regulations, and laws.
4. Construction has been completed in good and workmanlike manner, in accordance with the plans and specifications set forth in Schedule A of the Construction Loan Agreement, and all materials, chattels and fixtures usually furnished and installed and required by the plans and specifications have been furnished or installed and are of the best quality called for.
5. All monies previously advanced pursuant to requisitions of the mortgage loan have been paid to Barkan Construction Company (the General Contractor), subcontractors, or suppliers, and there are not further amounts owing to any person, other than that which is attached hereto. Any amounts owing will be paid within 30 days of receipt of the balance of the funds held by MHFA.
6. All insurance requirements of the Contract Documents have been complied with, and all policies are paid up and MHFA has been furnished with copies of the policies.



DOUGLASS PLAZA HOUSING COMPANY I  
(a Massachusetts Limited Partnership)

"CONDO PORTION"

MHFA PROJECT NO. 87-011-N

CERTIFICATE OF MORTGAGOR - CONTINUED

7. Except as noted below, none of the foregoing amounts were paid to a party with whom the Mortgagor has an identity of interest.

Name of Payee/Description

Nature of Identity of Interest

Boston Land Company Management  
Services, Inc.

Rent-up payroll and related cost  
reimbursements

Robert M. Kargman and Arthur D.  
Ullian, general partners of  
mortgagor, are shareholders  
in Boston Land Company Management  
Services, Inc.

Boston Land Company, Executive Of-  
fices (formerly BIDC)

Clerk of the works

Robert M. Kargman and Arthur D.  
Ullian, general partners of  
mortgagor, are general partners  
in Boston Land Company, Execu-  
tive Offices















